

**ACTIONS**  
**Board of Supervisors Meeting of January 9, 2008**

January 11, 2008

<u>AGENDA ITEM/ACTION</u>	<u>ASSIGNMENT</u>
<p>1. Call to Order.</p> <ul style="list-style-type: none"> <li>Meeting was called to order at 9:00 a.m. by the County Executive, Mr. Tucker. All BOS members were present. Also present were Larry Davis, Ella Jordan and Meagan Hoy.</li> </ul>	
<p>4. Election of Chairman.</p> <ul style="list-style-type: none"> <li><b>ELECTED</b> Kenneth C. Boyd for Calendar Year 2008.</li> </ul>	
<p>5. Election of Vice-Chairman.</p> <ul style="list-style-type: none"> <li><b>ELECTED</b> David Slutzky for Calendar Year 2008.</li> </ul>	
<p>6. Appointment of Clerk.</p> <ul style="list-style-type: none"> <li><b>REAPPOINTED</b> Ella Jordan as Clerk and <b>APPOINTED</b> Meagan Hoy as Senior Deputy Clerk for Calendar Year 2008.</li> </ul>	
<p>7. Set Meeting Times, Dates and Places for Calendar Year 2007.</p> <ul style="list-style-type: none"> <li><b>SET</b> as follows: first Wednesday of the month at 9:00 a.m., second Wednesday of the month at 6:00 p.m., with meetings to be held in the County Office Building on McIntire Road. Set the meeting dates for <b>January 2009</b> for: January 7 – 9:00 a.m., and January 14 – 6:00 p.m. Agreed to schedule a third meeting of the month on an as needed basis.</li> </ul>	<p><u>Clerk:</u> Advertise in <u>The Daily Progress</u> and post notice on door of Lane Auditorium.</p>
<p>8. Set Dates for Hearing Zoning Text Amendments Requested by Citizens.</p> <ul style="list-style-type: none"> <li><b>SET</b> as follows: September 10 and December 10, 2008 and March 11, and June 10, 2009.</li> </ul>	<p><u>Clerk:</u> Advertise in <u>The Daily Progress</u> as required by Section 33.10.2 of the Zoning Ordinance.</p>
<p>9. Rules of Procedures, Adoption of.</p> <ul style="list-style-type: none"> <li><b>ADOPTED</b> as amended at meeting.</li> </ul>	<p><u>Clerk:</u> Forward copy to County Attorney and Community Development. (Attachment 1)</p>
<p>10. Boards and Commission Policy, Adoption of.</p> <ul style="list-style-type: none"> <li><b>ADOPTED.</b></li> </ul>	<p>(Attachment 2)</p>
<p>11. Recognition: Proclamation: Vietnam Graffiti Project.</p> <ul style="list-style-type: none"> <li>Chairman read and presented to Art and Lee Beltrone.</li> </ul>	<p>(Attachment 3)</p>
<p>12. From the Board: Matters Not Listed on the Agenda.</p> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> <li>Expressed appreciation for being able to represent the citizens of the County.</li> </ul> <p><u>Dennis Rooker:</u></p> <ul style="list-style-type: none"> <li>Recognized the Charlottesville Marathon for being named one of the top ten marathons in the country by Runners Magazine.</li> </ul> <p><u>Sally Thomas:</u></p> <ul style="list-style-type: none"> <li>During this year she will be focusing more emphasis on protecting the rural areas, and the issue of dark skies.</li> </ul> <p><u>Lindsay Dorrier:</u></p> <ul style="list-style-type: none"> <li>Asked when the Board will discuss</li> </ul>	

<p>infrastructure needs. Mr. Tucker said infrastructure will be a part of the Five Year Plan discussion on January 23<sup>rd</sup>.</p> <p><u>Ken Boyd:</u></p> <ul style="list-style-type: none"> <li>• During this year he would like to work on streamlining the number of agenda items on an agenda.</li> </ul>	
<p>13. From the Public: Matters Not Listed on the Agenda.</p> <ul style="list-style-type: none"> <li>• Carl Shaw discussed issues related to land economics.</li> <li>• Rex Linville, of PEC, spoke about land conservation in the County. He commended Scott Clark for all his work.</li> <li>• Ben Thompson, representing Luck Stone Corporation, provided an update on the Route 22/250 intersection/realignment and signalization project. He noted that construction is expected to begin in May, with completion in October/November. This is a joint County/Luck Stone project.</li> <li>• Janie Eckman, speaking on behalf of Impact, expressed support for Item 14.1 on the consent agenda.</li> <li>• David Wayland, a member of the Crozet Community and Crozet Advisory Council, asked Board members to continue to protect the rural areas and keep Crozet in mind when it is making decisions.</li> <li>• Jeff Werner, of PEC, thanked Board members for having a Comprehensive Plan and policies in place which allows conservation easements to occur.</li> <li>• Neil Williamson, of the Free Enterprise Forum, thanked County staff and everyone for their work with conservation easements. He also commended the landowners for their dedication to the program.</li> </ul>	
<p>14.1 Grant Application to Fund Night Service on CTS for Route 5 in the Route 29 North Corridor.</p> <ul style="list-style-type: none"> <li>• <b>SUPPORTED</b> staff's recommendation to join with CTS to apply for the Federal Transit Administration the Job Access Reverse Commute (JARC) grant and commit the estimated \$70,000 toward the funding of night service on Route 5 in the County.</li> </ul>	<p><u>Juan Wade/David Benish:</u> Proceed as approved.</p> <p><u>OMB:</u> Bring forward funding request during budget cycle.</p>
<p>14.2 Community Development Block Grant Fund, Request to set public hearing.</p> <ul style="list-style-type: none"> <li>• <b>SET</b> public hearing for February 6, 2008.</li> </ul>	<p><u>Clerk:</u> Advertise public hearing.</p>
<p>14.3 Resolution to accept road(s) in Copperfield Subdivision into the State Secondary System of Highways.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution.</li> </ul>	<p><u>Clerk:</u> Forward signed resolution and Form AM-4.3 to Glenn Brooks. (Attachment 4)</p>
<p>14.4 Resolution to accept road(s) in Dunlora (Phase 3B) Subdivision into the State Secondary System of Highways.</p> <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution.</li> </ul>	<p><u>Clerk:</u> Forward signed resolution and Form AM-4.3 to Glenn Brooks. (Attachment 5)</p>
<p>14.5 Resolution to accept road(s) in Bentivar (Phase 2)</p>	<p><u>Clerk:</u> Forward signed resolution and Form</p>

	Subdivision into the State Secondary System of Highways. <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution.</li> </ul>	AM-4.3 to Glenn Brooks. (Attachment 6)
14.6	Resolution to accept road(s) in Foxcroft (Phase 4) Subdivision into the State Secondary System of Highways. <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution.</li> </ul>	<u>Clerk</u> : Forward signed resolution and Form AM-4.3 to Glenn Brooks. (Attachment 7)
14.7	Request to install "Watch for Child Playing" Sign for Stonewood Drive (Route 1034). <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> resolution approving the installation of "Watch for Child Playing" signs on Stonewood Drive (Route 1034).</li> <li>• Ms. Thomas asked that staff come up with a monitoring process whereby it can determine in five years if there are still small children in the neighborhood and the sign is relevant.</li> </ul>	<u>Clerk</u> : Forward signed resolution to Juan Wade to proceed with as approved. (Attachment 8)  <u>Juan Wade</u> : Proceed as requested.
14.9	Proffer Management Quarterly Cash Proffer Activity Report. <ul style="list-style-type: none"> <li>• Board members asked that the report track the entire proffer dollar amounts, i.e., amounts due to us and not received; amounts received and not expended, etc.</li> </ul>	<u>Amelia McCulley/Sarah Baldwin</u> : Provide quarterly report with information as requested.
15.	<b><u>Appeal: ARB-2007-80: Montessori Community School.</u></b> <ul style="list-style-type: none"> <li>• <b>REFERRED ARB-2007-80</b>, by a vote of 6:0, with the applicant's consent back to the ARB to reconsider its decision based on the Board's discussion.</li> </ul>	<u>Margaret Maliszewski</u> : Proceed as directed by the Board.
16.	City, County YMCA Use Agreement. <ul style="list-style-type: none"> <li>• <b>APPROVED</b> the proposed Use Agreement and <b>AUTHORIZED</b> the County Executive to execute the agreement on behalf of the County in substantially the same form as provided to the Board, after it has been approved by the County Attorney with any necessary changes.</li> </ul>	<u>County Attorney's office/Pat Mullaney</u> : Provide Clerk's office with copy of agreement after approved by all necessary parties. (Attachment 9)
17.	Rivanna Magisterial District-Emergency Ordinance to change the polling place for the Keswick Precinct. <ul style="list-style-type: none"> <li>• <b>ADOPTED</b> the attached proposed emergency ordinance and <b>SET</b> a public hearing to readopt the ordinance at its February 6, 2008 meeting.</li> </ul>	<u>Clerk</u> : Forward copy of adopted ordinance to Registrar and advertise public hearing for February 6, 2008. (Attachment 10)
	The Board recessed at 11:56 and reconvened at 12:06 p.m.	
18.	Albemarle County Service Authority/Rivanna Water and Sewer Authority Updates. <ul style="list-style-type: none"> <li>• <b>RESCINDED</b>, by a vote of 6:0, the water emergency declaration made in August, 2007.</li> <li>• <b>ADOPTED</b>, by a vote of 6:0, resolution urging citizens on public water and individual wells, to continue to voluntarily practice water conservation.</li> <li>• Ms. Thomas suggested the ACSA communicate with the ARB regarding the type of landscaping that uses the least water.</li> <li>• Mr. Slutzky asked Mr. Fern to give him a call regarding a sewer line extension in Northfields.</li> </ul>	<u>Clerk</u> : Forward action to ACSA and RWSA. (Attachment 11)
19.	Department of Social Services Advisory Board Annual Report.	

	<ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
20.	<p>Closed Session. Personnel and Legal Matters.</p> <ul style="list-style-type: none"> <li>• At 1:07 p.m., the Board went into closed session to consider appointments to boards, committees, and commissions.</li> </ul>	
21.	<p>Certified Close Session.</p> <ul style="list-style-type: none"> <li>• At 2:08 p.m., the Board reconvened into open session and certified the closed session.</li> </ul>	
22.	<p>Boards and Commissions: Appointments.</p> <ul style="list-style-type: none"> <li>• <b>APPOINTED</b> Thomas Loach to Planning Commission representing the White Hall District with said term to expire 12/31/11.</li> <li>• <b>APPOINTED</b> Linda Porterfield to the Planning Commission representing the Scottsville District with said term to expire 12/31/11.</li> <li>• <b>REAPPOINTED</b> Calvin Morris to the Planning Commission representing the Rivanna District with said term to expire 12/31/11.</li> <li>• <b>REAPPOINTED</b> Marcia Joseph to the Planning Commission as the At-Large Member with said term to expire 12/31/09.</li> <li>• <b>REAPPOINTED</b> Lincoln Lewis to the Board of Social Services representing the Rivanna District with said term to expire 12/31/11.</li> <li>• <b>REAPPOINTED</b> Claude Foster to the Board of Social Services representing the White Hall District with said term to expire 12/31/11.</li> <li>• <b>REAPPOINTED</b> Calvin Morris to the CHART Advisory Committee with said term to expire 12/31/10.</li> <li>• <b>APPOINTED</b> David Paulson to the Housing Committee with said term to expire 12/31/08.</li> <li>• <b>APPOINTED</b> Clyde Gouldman to the Region Ten Community Services Board with said term to expire 6/30/08.</li> <li>• <b>REAPPOINTED</b> Alan Culbertson to the Charlottesville Area Community Foundation Governing Board with said term to expire 12/31/2010.</li> </ul>	<p><u>Clerk:</u> Prepare appointment/reappointment letters, update Boards and Commissions book, webpage, and notify appropriate persons.</p>
23a.	<p>Work Session: 2008/09-2013/14 Six Year Secondary Road Plan.</p> <ul style="list-style-type: none"> <li>• <b>DIRECTED</b> staff to bring back more information, schedule an additional work session in February, and move the public hearing to March. (Correction to report: In the <i>Potential Project List</i>, page 5, # 39, Route 641, Fray's Mill Road at Jacobs Run, Jacobs Run is located on Route 743.)</li> </ul>	<p><u>Clerk:</u> Schedule additional work session on Board's agenda for February 26<sup>th</sup> and reschedule public hearing for March 10<sup>th</sup>.</p>
23b.	<p>VDOT Monthly Report/Advance Mills Bridge Update.</p> <ul style="list-style-type: none"> <li>• <b>RECEIVED.</b></li> </ul>	
23c.	<p>Transportation Matters not Listed on the Agenda. <u>Dennis Rooker:</u></p> <ul style="list-style-type: none"> <li>• Would like to find out if existing bridges can be strengthened to support emergency vehicles, and what the cost of that would be. (Brimley Road)</li> <li>• VDoT will set a meeting on Georgetown to go</li> </ul>	<p><u>Clerk:</u> Forward comments to Sue Kennedy and Allan Sumpter.</p>

<p>over plans with Mr. Rooker.</p> <p><u>Lindsay Dorrier:</u></p> <ul style="list-style-type: none"> <li>Route 630 located in Southern Albemarle is in bad shape.</li> </ul> <p><u>David Slutzky:</u></p> <ul style="list-style-type: none"> <li>It might be helpful to add a sign at the Airport with a “straight ahead arrow” to clarify the traffic circle for citizens.</li> </ul> <p><u>Sally Thomas:</u></p> <ul style="list-style-type: none"> <li>White Gables and Kenridge Condominiums, located on Route 250 West, have one access site. Residents are concerned that it would be dangerous to have one access with no stop light. Joel DeNunzio of VDoT advised that VDoT asked for a revision to the warrant analysis, and once they receive that, they will have the signal in place.</li> <li>Asked if VDoT was part of the discussions on the new acute long term care medical facility proposed on Route 250. Joel DeNunzio advised that they are.</li> <li>In between Verdant Lawn Lane and West Leigh Drive, the “watch for deer sign” has disappeared. VDoT will put another one in its place.</li> </ul> <p><u>Ann Mallek:</u></p> <ul style="list-style-type: none"> <li>The temporary Advance Mills Bridge has been submitted to VDoT’s Central Office for advertisement on January 22, 2008 and a pre-bid meeting will take place with the contractors on February 5, 2008. The bid expected to be awarded in March 2008.</li> </ul> <p><u>Ken Boyd:</u></p> <ul style="list-style-type: none"> <li>Asked about the status of the right-of-way revision with the City. Mr. Sumpter advised they are researching jurisdiction at this time. The advertisement date is set for Spring, but could change.</li> <li>Given the update provided by Luck Stone earlier in the meeting, he asked about VDoT’s role with the proposed improvements to the Intersection of Route 250/ 22. Mr. Sumpter advised that VDoT is in the preliminary engineering and right-of-way phases, and they are near completion. VDoT is willing to help facilitate any issues.</li> </ul>	<p><u>David Benish:</u> Bring back information on safety and importance of the project.</p>
<p>24. Request to amend the Jurisdictional Area Boundary of the Albemarle County Service Authority to provide water and sewer service to Tax Map 56, Parcel 67A (Cohousing Site), and Parcels 67, 67B, and 74B, all located in the Crozet Community Development Area. Three Notch’d Road (Route 240). White Hall Dist.</p> <ul style="list-style-type: none"> <li><b>APPROVED</b>, by a vote of 6:0, the inclusion of Tax Map 56, Parcels 67A in the ACSA jurisdictional area for water and sewer service.</li> </ul>	<p><u>David Benish:</u> Proceed as approved.</p>
<p>25. <b>PROJECT: SP-2007-038. Carrsbrook (ATC)- Verizon Tier III PWSF.</b></p>	<p><u>Clerk:</u> Set out conditions of approval. (Attachment 10)</p>

	<ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 4:2 (Rooker, Thomas) both SP-2007-038 (subject to the ten conditions recommended by the Planning Commission) and the two modifications.</li> </ul>	
26.	<p><b>PROJECT: SP-2007-41. Collin Gallahue, Violin Maker.</b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, SP-2007-041 subject to the three conditions recommended.</li> </ul>	Clerk: Set out conditions of approval. (Attachment 12)
27.	<p><b>PROJECT: SP-2007-044. SPCA Amendment.</b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, SP-2007-044 subject to the six conditions recommended.</li> </ul>	Clerk: Set out conditions of approval. (Attachment 12)
28.	<p><b>PROJECT: SP-2007-048. Mt. Alto Baptist Church Building Addition.</b></p> <ul style="list-style-type: none"> <li>• <b>APPROVED</b>, by a vote of 6:0, SP-2007-048 subject to the six conditions recommended.</li> </ul>	Clerk: Set out conditions of approval. (Attachment 12)
29.	<p><b>Work Session: Regional Transit Authority.</b></p> <ul style="list-style-type: none"> <li>• <b>HELD.</b></li> </ul>	
14.10	<p>Memorandum dated December 13, 2007, from Amelia McCulley, Zoning Administrator, to the Board of Supervisors, <b>re: Rural Area Subdivisions.</b></p> <ul style="list-style-type: none"> <li>• Directed staff to draft a resolution of intent to come back to the Board.</li> </ul>	Bill Fritz: Proceed as directed.
30.	<p>From the Board: From the Board: Committee Reports and Matters Not Listed on the Agenda. Sally Thomas:</p> <ul style="list-style-type: none"> <li>• The TJPDC appreciates the work County staff did on the proffer system. She added that monthly they will be sharing new items of interest.</li> </ul>	
27.	<p>Adjourn to January 14, 2008, 4:30 p.m.</p> <ul style="list-style-type: none"> <li>• The meeting was adjourned at 6:42 p.m. to January 14, 2008, 4:30 p.m.</li> </ul>	

ewj/mrh

Attachment 1 – Rules of Procedures

Attachment 2 – Boards and Commissions Policy

Attachment 3 – Proclamation: Vietnam Graffiti Project

Attachment 4 – Resolution to accept road(s) in Copperfield Subdivision into the State Secondary System of Highways

Attachment 5 – Resolution to accept road(s) in Dunlora (Phase 3B) Subdivision into the State Secondary System of Highways

Attachment 6 – Resolution to accept road(s) in Bentivar (Phase 2) Subdivision into the State Secondary System of Highways

Attachment 7– Resolution to accept road(s) in Foxcroft (Phase 4) Subdivision into the State Secondary System of Highways

Attachment 8 – Resolution - “Watch for Child Playing” Sign for Stonewood Drive (Route 1034)

Attachment 9 – City, County YMCA Use Agreement

Attachment 10 – Rivanna Magisterial District-Emergency Ordinance

Attachment 11 – Resolution – water conservation

Attachment 12 – Planning Conditions of Approval

**RULES OF PROCEDURE  
ALBEMARLE BOARD OF COUNTY SUPERVISORS**

A. *Officers*

1. *Chairman.* The Board at its annual meeting shall elect a Chairman who, if present, shall preside at such meeting and at all other meetings during the year for which elected. In addition to being presiding officer, the Chairman shall be the head official for all the Board's official functions and for ceremonial purposes. He shall have a vote but no veto. (Virginia Code Sections 15.2-1422 and 15.2-1423)
2. *Vice-Chairman.* The Board at its annual meeting shall also elect a Vice-Chairman, who, if present, shall preside at meetings in the absence of the Chairman and shall discharge the duties of the Chairman during his absence or disability. (Virginia Code Section 15.2-1422)
3. *Term of Office.* The Chairman and Vice-Chairman shall be elected for one-year terms; but either or both may be re-elected for one or more additional terms. (Virginia Code Section 15.2-1422)
4. *Absence of Chairman and Vice-Chairman.* If the Chairman and Vice Chairman are absent from any meeting, a present member shall be chosen to act as Chairman.

B. *Clerk and Deputy Clerks*

The Board at its annual meeting shall designate a Clerk and one or more Deputy Clerks who shall serve at the pleasure of the Board. The duties of the Clerk shall be those set forth in Virginia Code Section 15. 2-1539 and such additional duties set forth in resolutions of the Board as adopted from time to time. (Virginia Code Section 15.2-1416)

C. *Meetings*

1. *Annual Meeting.* The first meeting in January held after the newly elected members of the Board shall have qualified, and the first meeting held in January of each succeeding year, shall be known as the annual meeting. At such annual meeting, the Board shall establish the days, times, and places for regular meetings of the Board for that year. (Virginia Code Section 15.2-1416)
2. *Regular Meetings.* The Board shall meet in regular session on such day or days as has been established at the annual meeting. The Board may subsequently establish different days, times, or places for such regular meetings by passing a resolution to that effect in accord with Virginia Code Section 15.2-1416. If any day established as a regular meeting day falls on a legal holiday, the meeting scheduled for that day shall be held on the next regular business day without action of any kind by the Board. (Virginia Code Section 15.2-1416)

If the Chairman (or Vice Chairman, if the Chairman is unable to act) finds and declares that weather or other conditions are such that it is hazardous for Board members to attend a regular meeting, such meeting shall be continued to the next regular meeting date. Such finding shall be communicated to the members of the Board and to the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement shall be required. (Virginia Code Section 15.2-1416)

Regular meetings, without further public notice, may be adjourned from day to day or from time to time or from place to place, not beyond the time fixed for the next regular meeting, until the business of the Board is complete. (Virginia Code Section 15.2-1416)

3. *Special Meetings.* The Board may hold special meetings as it deems necessary at such times and places as it deems convenient. A special meeting may be adjourned from time to time as the Board finds necessary and convenient. (Virginia Code Section 15.2-1417)

A special meeting shall be held when called by the Chairman or requested by two or more members of the Board. The call or request shall be made to the Clerk of the Board and shall specify the matters to be considered at the meeting. Upon receipt of such call or request, the Clerk, after consultation with the Chairman, shall immediately notify each member of the Board, the County Executive, and the County Attorney. The notice shall be in writing and delivered to the person or to his place of residence or business. The notice shall state the time and place of the meeting and shall specify the matters to be considered. No matter not specified in the notice shall be considered at such meeting unless all members are present. The notice may be waived if all members are present at the special meeting or if all members sign a waiver for the notice. (Virginia Code Section 15.2-1418) The Clerk shall notify the general news media of the time and place of such special meeting and the matters to be considered.

#### D. *Order of Business*

The Clerk of the Board shall establish the agenda for all meetings in consultation with the Chairman. The first two items on the agenda for each regular meeting of the Board shall be the Pledge of Allegiance and a moment for silent meditation.

The procedures for receiving comment from the public for matters not on the agenda shall be at the discretion of the Board. Unless otherwise decided, individuals will be allowed a three-minute time limit in which to speak during the time set aside on the agenda for "From the Public: Matters Not Listed for Public Hearing on the Agenda".

Zoning applications advertised for public hearing shall be on the agenda for public hearing on the advertised date unless the applicant submits a signed written deferral request to the Clerk of the Board no later than noon on Wednesday of the week prior to the scheduled public hearing. The first request for a deferral will be granted administratively by the Clerk. The Board will be notified of the deferral in the next Board package and the deferral will be announced at the earliest possible Board meeting to alert the public of the deferral. Any request received later than the Wednesday deadline and any subsequent request for a deferral for the same application previously deferred will be granted only at the discretion of the Board by a majority vote. The deferral shall not be granted unless the Board determines that the reason for the deferral justifies the likely inconvenience to the public caused by the deferral. The staff will make every effort to alert the public when a deferral is granted.

It is the Board's preference that a public hearing should not be advertised until all of the final materials for a zoning application have been received by the County and are available for public review. To achieve this preference, applicants should provide final plans, final codes of development, final proffers, and any other documents deemed necessary by the Director of Community Development, to the County no later than two business days prior to the County's deadline for submitting the public hearing advertisement to the newspaper. Staff will advise applicants of this date by including it in annual schedules for applications and by providing each applicant a minimum of two weeks advance notice of the deadline.

If the applicant does not submit the required materials by this date, the public hearing shall not be advertised unless the applicant demonstrates to the satisfaction of the Director of Community Development that good cause exists for the public hearing to be advertised. If not advertised, a new public hearing date will be scheduled. If the public hearing is held without final materials being available for review throughout the advertisement period due to a late submittal of

documents, or because substantial revisions or amendments are made to the submitted materials after the public hearing has been advertised, it will be the policy of the Board to either defer action and schedule a second public hearing that provides this opportunity to the public or to deny the application, unless the Board finds that the deferral would not be in the public interest or not forward the purposes of this policy.

Final signed proffers shall be submitted to the County no later than nine calendar days prior to the date of the advertised public hearing. This policy is not intended to prevent changes made in proffers at the public hearing resulting from comments received from the public or from Board members at the public hearing.

E. *Quorum*

A majority of the members of the Board shall constitute a quorum for any meeting of the Board. If during a meeting less than a majority of the Board remains present, no action can be taken except to adjourn the meeting. If prior to adjournment the quorum is again established, the meeting shall continue. (Virginia Code Section 15.2-1415)

A majority of the members of the Board present at the time and place established for any regular or special meeting shall constitute a quorum for the purpose of adjourning such meeting from day to day or from time to time, but not beyond the time fixed for the next regular meeting.

F. *Voting Procedures*

1. *Approval by Motion.* Unless otherwise provided, decisions of the Board shall be made by approval of a majority of the members present and voting on a motion properly made by a member and seconded by another member. Any motion that is not seconded shall not be further considered. The vote on the motion shall be by a voice vote. The Clerk shall record the name of each member voting and how he voted on the motion. If any member abstains from voting on any motion, he shall state his abstention. The abstention will be announced by the Chairman and recorded by the Clerk. A tie vote shall defeat the motion voted upon. (Article VII, Section 7, Virginia Constitution)
2. *Special Voting Requirements.* A recorded affirmative vote of a majority of all elected members of the Board shall be required to approve an ordinance or resolution (1) appropriating money exceeding the sum of \$500; (2) imposing taxes; or (3) authorizing the borrowing of money. (Virginia Code Section 15.2-1428)
3. *Public Hearings.* The Board shall not decide any matter before the Board requiring a public hearing until the public hearing has been held. The Board may, however, at its discretion, defer or continue the holding of a public hearing or consideration of such matter. The procedures for receiving comment from the applicant and the public for public hearings shall be at the discretion of the Board. Unless otherwise decided, the applicant shall be permitted no more than ten minutes to present its application. Following the applicant's presentation, any member of the public shall be permitted no more than three minutes to present public comment. Speakers are limited to one appearance at any public hearing. Following the public comments, the applicant shall be permitted no more than five minutes for a rebuttal presentation.
4. *Motion to Amend.* A motion to amend a motion before the Board, properly seconded, shall be discussed and voted by the Board before any vote is taken on the original motion unless the motion to amend is accepted by both the members making and seconding the original motion. If the motion to amend is approved, the amended motion is then before the Board for its consideration. If the motion to amend is not approved, the original motion is again before the Board for its consideration.
5. *Previous Question.* Discussion of any motion may be terminated by any member moving the "previous question". Upon a proper second, the Chairman shall call for a vote on the motion of the previous question. If approved by a majority of those voting, the Chairman

shall immediately call for a vote on the original motion under consideration. A motion of the previous question shall not be subject to debate and shall take precedence over any other matter.

6. *Motion to Reconsider.* Any decision made by the Board may be reconsidered if a motion to reconsider is made at the same meeting or an adjourned meeting held on the same day at which the matter was decided. The motion to reconsider may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to reconsider, if approved, shall be to place the matter for discussion in the exact position it occupied before it was voted upon.

7. *Motion to Rescind.* Any decision made by the Board, except for zoning map amendments, special use permit decisions, and ordinances, (these exceptions shall only be subject to reconsideration as provided above) may be rescinded by a majority vote of all elected members of the Board. The motion to rescind may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to rescind, if approved, is to nullify the previous decision of the Board. Zoning map amendments, special use permit decisions and ordinances may be rescinded or repealed only upon meeting all the legal requirements necessary for taking action on such matters as if it were a new matter before the Board for consideration.

G. *Amendment of Rules of Procedure*

These Rules of Procedure may be amended by a majority vote of the Board at the next regular meeting following a regular meeting at which notice of the motion to amend is given.

H. *Suspension of Rules of Procedure*

These Rules of Procedure may be suspended by the majority vote of the Board members present and voting. The motion to suspend a rule may be made by any member of the Board. Upon a proper second, the motion may be discussed and voted. The effect of the motion to suspend a rule, if approved, is to make that rule inapplicable to the matter before the Board. Provided, however, approval of a motion to suspend the rule shall not permit the Board to act in violation of a requirement mandated by the Code of Virginia, the Constitution of Virginia, or any other applicable law.

I. Necessary rules of procedure not covered by these Rules of Procedures shall be governed by Robert's Rules of Order's Procedure in Small Boards.

\* \* \* \* \*

(Adopted 2-15-73; Amended and/or Readopted 9-5-74, 9-18-75; 2-19-76; 1-3-77; 1-4-78; 1-3-79; 1-2-80; 1-7-81; 1-6-82; 1-5-83; 1-3-84; 1-2-85; 1-3-86; 1-7-87; 1-6-88; 1-4-89; 1-2-90; 1-2-91; 1-2-92; 1-6-93; 1-5-94; 1-4-95; 1-3-96; 1-2-97; 1-7-98; 1-6-99; 1-5-2000; 1-3-2001; 1-9-2002; 1-8-2003; 1-7-2004; 1-5-2005; 1-4-2006; 1-3-2007; 1-9-2008).

**ALBEMARLE COUNTY BOARD OF SUPERVISORS  
POLICY FOR BOARDS AND COMMISSIONS**

**A. CREATION OF NEW BOARDS AND COMMISSIONS**

1. On an annual basis the list of active boards and commissions will be purged of all bodies not required by Federal, State, County or other regulations, which have not met at least once during the prior twelve-month period.

2. Whenever possible and appropriate, the functions and activities of boards and commissions will be combined, rather than encouraging the creation of new bodies.

3. Any newly created task force or ad hoc committee which is intended to serve for a limited time period may be comprised of magisterial or at-large members at the discretion of the Board of Supervisors. The appointment process shall follow that adopted in Section B for other magisterial and/or at-large positions.

**B. APPOINTMENTS TO BOARDS AND COMMISSIONS**

1. All appointments to boards and commissions based upon magisterial district boundaries will be made by the members of the Board of Supervisors. All magisterial positions will be advertised. At the discretion of the supervisor of that district, selected applicants may be interviewed for the position.

2. Prior to each day Board meeting, the Clerk will provide the Board a list of expired terms and vacancies that will occur within the next sixty days. The Board will then advise the Clerk which vacancies to advertise.

3. In an effort to reach as many citizens as possible, notice of boards and commissions with appointment positions available will be published through available venues, such as, but not limited to, the County's website, A-mail, public service announcements and local newspapers. Interested citizens will be provided a brief description of the duties and functions of each board, length of term of the appointment, frequency of meetings, and qualifications necessary to fill the position. An explanation of the appointment process for both magisterial and at-large appointments will also be sent to all applicants.

4. All interested applicants will have a minimum of thirty days from the date of the first notice to complete and return to the Clerk of the Board of Supervisors a detailed application, with the understanding that such application may be released to the public, if requested. No applications will be accepted if they are postmarked after the advertised deadline, however, the Board, at its discretion, may extend the deadline.

5. Once the deadline for accepting applications is reached, the Clerk will distribute all applications received to the members of the Board of Supervisors prior to the day meeting for their review. For magisterial appointments, the Clerk will forward applications as they are received to the supervisor of that district who will then recommend his/her appointment.

6. From the pool of qualified candidates, the Board of Supervisors, at their discretion, may make an appointment without conducting an interview, or may select applicants to interview for the vacant positions. The Clerk will then schedule interviews with applicants to be held during the next day meeting. For magisterial appointments, the decision to interview selected candidates will be determined by the supervisor of that district.

7. All efforts will be made to interview selected applicants and make appointments within ninety days after the application deadline. For designated agency appointments to boards and commissions, the agency will be asked to recommend a person for appointment by the Board of Supervisors.

8. All vacancies will be filled as they occur.

9. All incumbents will be allowed to serve on a board or commission without his/her position being readvertised unless, based on attendance and performance, the chairman of the body or a member of the Board of Supervisors requests the Board of Supervisors to do otherwise.

10. As a condition to assuming office all citizen members of boards and commissions shall file a real estate disclosure form as set forth in the State and Local Government Conflict of Interests Act and thereafter shall file such form annually on or before January 15.

11. If a member of a board or commission does not participate in at least fifty percent of a board's or commission's meetings, the chairman of the body may request the Board of Supervisors terminate the appointment and refill it during the next scheduled advertising period.

**C. ADOPTION**

This policy shall be reviewed and readopted by the Board of Supervisors in January.

(Amended and/or Readopted 01-07-98; 02-12-2005; 01-04-2006; 01-03-2007; 01-09-2008)

**“Marking Time: Voyage to Vietnam”**

**Whereas,** the volunteer Vietnam Graffiti Project was founded in 1997 by Albemarle County residents Art and Lee Beltrone of Keswick, after Art Beltrone discovered historic graffiti-inscribed berthing unit canvases aboard the former military troop ship "General Nelson M. Walker" in Virginia's James River Reserve Fleet--also known as the "Ghost Fleet," and the graffiti was left by young American soldiers going to the war in Vietnam during the 1960s; and

**Whereas,** during subsequent years the couple organized a cadre of volunteers who worked with the Maritime Administration to remove more than 1,000 of the historic rack canvases and other artifacts for preservation which were transferred to museums maintained by the Library of Congress, Smithsonian Institution, Army, Navy, Marine Corps, and state and local repositories throughout the United States, and the Albemarle Charlottesville Historical Society also received a canvas signed by a local soldier; and

**Whereas,** just prior to the organization's tenth anniversary, the Vietnam Graffiti Project, in partnership with the Virginia Foundation for the Humanities, created the "Marking Time: Voyage to Vietnam" traveling exhibit, which had its premier Albemarle County opening January 7, 2008 at the Albemarle County Office Building and remains on display at the COB through January 11, 2008; and

**Whereas,** because of its historic relevance, the "Marking Time" exhibit will be shared with other communities throughout the nation following its debut at the County Office Building;

**Now, Therefore, Be It Resolved,** that the Albemarle County Board of Supervisors expresses its sincere appreciation to Art and Lee Beltrone for their outstanding devotion and dedication to preserving this important collection of artifact history and creating a display that communicates the emotion and experience of young soldiers shipping out to the Vietnam War.

**Signed and sealed this 9<sup>th</sup> day of January, 2008.**

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 9th day of January 2008, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Copperfield Subdivision**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Copperfield Subdivision**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

\* \* \* \* \*

The road(s) described on Additions Form AM-4.3 is:

- 1) **Copperfield Ridge (State Route 1627)** from the intersection of Reas Ford Road (Route 660) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 2555, pages 300-309, with a 50-foot plus right-of-way width, for a length of 0.21 miles.

Total Mileage – 0.21

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 9th day of January 2008, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Dunlora Subdivision, Phase 3B**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Dunlora Subdivision, Phase 3B**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

\* \* \* \* \*

The road(s) described on Additions Form AM-4.3 is:

- 1) **Shepherds Ridge Road (State Route 1709)** from existing end of state maintenance to the intersection of Townbrook Crossing (Route 1713), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.10 miles.
- 2) **Shepherds Ridge Road (State Route 1709)** from the intersection of Townbrook Crossing (Route 1713) to the intersection of Townbrook Crossing (Route 1713), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.12 miles.
- 3) **Shepherds Ridge Road (State Route 1709)** from the intersection of Townbrook Crossing (Route 1713) to the end of state maintenance, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.05 miles.
- 4) **Townbrook Crossing (State Route 1713)** from the intersection of Shepherds Ridge Road (Route 1709) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 5) **Townbrook Crossing (State Route 1713)** from the intersection of Shepherds Ridge Road (Route 1709) to the end of state maintenance, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1836, page 184, with a 50-foot plus right-of-way width, for a length of 0.07 miles.

Total Mileage – 0.40

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 9th day of January 2008, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Bentivar Subdivision, Phase 2**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Bentivar Subdivision, Phase 2**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

\* \* \* \* \*

The road(s) described on Additions Form AM-4.3 is:

- 1) **Bentivar Farm Road (State Route 1064)** from the intersection of Bentivar Drive (Route 1033) to the intersection of Hartland Court (Route 1066), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.26 miles.
- 2) **Bentivar Farm Road (State Route 1064)** from the intersection of Hartland Court (Route 1066) to the intersection of Oak Ridge Court (Route 1067), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.10 miles.
- 3) **Bentivar Farm Road (State Route 1064)** from the intersection of Oak Ridge Court (Route 1067) to the intersection of Walnut Ridge Lane (Route 1077), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.12 miles.
- 4) **Bentivar Farm Road (State Route 1064)** from the intersection of Walnut Ridge Lane (Route 1077) to the intersection of Bentivar Farm Court (Route 1065), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 5) **Bentivar Farm Road (State Route 1064)** from the intersection of Bentivar Farm Court (Route 1065) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 284-285, with a 50-foot plus right-of-way width, for a length of 0.15 miles.

- 6) **Hartland Court (State Route 1066)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, page 284, with a 50-foot plus right-of-way width, for a length of 0.18 miles.
- 7) **Oak Ridge Court (State Route 1067)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, page 286, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 8) **Bentivar Farm Court (State Route 1065)** from the intersection of Bentivar Farm Road (Route 1064) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, page 285, with a 50-foot plus right-of-way width, for a length of 0.07 miles.
- 9) **Walnut Ridge Lane (State Route 1077)** from the intersection of Bentivar Farm Road (Route 1064) to the intersection of Beech Grove Court (Route 1079), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.08 miles.
- 10) **Walnut Ridge Lane (State Route 1077)** from the intersection of Beech Grove Court (Route 1079) to the intersection of Walnut Ridge Court (Route 1078), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.25 miles.
- 11) **Walnut Ridge Lane (State Route 1077)** from the intersection of Walnut Ridge Court (Route 1078) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 287-289, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 12) **Walnut Ridge Court (State Route 1078)** from the intersection of Walnut Ridge Lane (Route 1077) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 288, with a 50-foot plus right-of-way width, for a length of 0.07 miles.
- 13) **Beech Grove Court (State Route 1078)** from the intersection of Walnut Ridge Lane (Route 1077) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1666, pages 287, with a 50-foot plus right-of-way width, for a length of 0.14 miles.

Total Mileage – 1.66

The Board of County Supervisors of Albemarle County, Virginia, in regular meeting on the 9th day of January 2008, adopted the following resolution:

RESOLUTION

WHEREAS, the street(s) in **Foxcroft Subdivision, Phase 4**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, fully incorporated herein by reference, is shown on plats recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised the Board that the street(s) meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation.

NOW, THEREFORE, BE IT RESOLVED, that the Albemarle Board of County Supervisors requests the Virginia Department of Transportation to add the street(s) in **Foxcroft Subdivision, Phase 4**, as described on the attached Additions Form AM-4.3 dated **January 9, 2008**, to the secondary system of state highways, pursuant to §33.1-229 and §33.1-82, Code of Virginia, and the Department's Subdivision Street Requirements; and

BE IT FURTHER RESOLVED that the Board guarantees a clear and unrestricted right-of-way, as described, exclusive of any necessary easements for cuts, fills and drainage as described on the recorded plats; and

FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

\* \* \* \* \*

The road(s) described on Additions Form AM-4.3 is:

- 1) **Foxvale Lane (State Route 1141)** from existing end of state maintenance to the intersection of Rolling Valley Court (Route 1052), as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.06 miles.
- 2) **Foxvale Lane (State Route 1141)** from the intersection of Rolling Valley Court (Route 1052) to the cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.14 miles.
- 3) **Rolling Valley Court (State Route 1052)** from the intersection of Foxvale Lane (Route 1141) to the west cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.09 miles.
- 4) **Rolling Valley Court (State Route 1052)** from the intersection of Foxvale Lane (Route 1141) to the east cul-de-sac, as shown on plat recorded in the office the Clerk of Circuit Court of Albemarle County in Deed Book 1504, page 14, with a 50-foot plus right-of-way width, for a length of 0.05 miles.

Total Mileage – 0.20

**RESOLUTION TO AUTHORIZE  
VIRGINIA DEPARTMENT OF TRANSPORTATION  
TO INSTALL WATCH FOR CHILD PLAYING SIGN ON  
STONEWOOD DRIVE (ROUTE 1034)**

**WHEREAS**, the residents of Stonewood Drive are concerned about traffic in their neighborhood and the potential hazard it creates for the numerous children that live and play in the neighborhood; and

**WHEREAS**, many children live and play on Stonewood Drive and the residents believe that a “Watch for Child Playing” sign would help alleviate some of the safety concerns; and

**WHEREAS**, the residents of Stonewood Drive have requested that the County take the necessary steps to have a “Watch for Child Playing” sign installed;

**NOW, THEREFORE, BE IT RESOLVED** that the Albemarle County Board of Supervisors hereby approves the community’s request for VDOT to install “Watch for Child Playing” sign(s) on Stonewood Drive.

**THIS GROUND LEASE** (hereafter the "Lease") is entered into this 1st day of \_\_\_\_\_, 200\_\_ by the **CITY OF CHARLOTTESVILLE** (hereafter the "City") and the **PIEDMONT FAMILY YMCA, INC.**, a charitable non-profit organization authorized to do business in the Commonwealth of Virginia (hereafter "Lessee").

**1. Leased Property.** The City, as the title holder of the subject property, in consideration of the rents and covenants to be paid and performed by the Lessee, leases to the Lessee and the Lessee leases a portion of the property commonly known as McIntire Park in the City of Charlottesville, being within the area described on Exhibit A, attached hereto and incorporated herein by reference, (hereafter the "Leased Property").

*[Note: the specific property subject to this Lease will be approximately 3 – 5 acres and located on the western side of McIntire Park in the area currently used as softball fields. The exact boundaries of the Leased Property will be determined by the City following the completion of a Master Plan for McIntire Park, which the City shall complete by May 20, 2008. The area to be studied for the exact boundaries is shown in Exhibit A. In the event the City has not completed the Master Plan, the boundaries of the Leased Property shall be the area identified on the plat attached hereto as Exhibit C, as per Paragraph 4 below. In no event shall the Leased Property include the existing picnic shelters, playground area, concession/restrooms building, parking areas or baseball fields.]*

**2. Title to Leased Property.** The City represents and warrants to the Lessee that it has the power and authority to execute this Lease and to carry out and perform all covenants to be performed by the City under this Lease.

**3. Condition of Leased Property and Lessee's Right of Entry.** The Leased Property is currently used as active and passive public recreational areas under the supervision of the City Department of Parks and Recreation. The City makes no representation or warranty as to the condition or suitability of the Leased Property for the intended purpose of this Lease prior to or at the time of the execution of this Lease. Lessee accepts the Leased Property "as is" on the effective date hereof.

Prior to the Commencement Date specified in Paragraph 4, the Lessee shall have the right to enter onto the Leased Property for the purpose of conducting, at Lessee's own risk, cost and expense, surveys, soil borings, engineering studies and other similar examinations necessary to determine the suitability of the Leased Property for the Lessee's intended use. Lessee shall provide reasonable notice to the City Department of Parks and Recreation prior to entering the property, and shall exercise this right of entry at all times so as not to unreasonably interfere with the normal operation of McIntire Park. If Lessee determines, as a result of its studies, that the Leased Property is not suitable for its intended use, Lessee may terminate this Lease prior to the Commencement Date, and neither party shall have any further rights or obligations hereunder. In the event of such termination Lessee shall, at its own expense, restore the Leased Property to the condition in which it existed prior to any changes made during the course of its studies. Lessee indemnifies and agrees to hold the City harmless and defend the City from all claims for damages to the City or its agents caused by actions of the Lessee in the course of conducting the studies.

**4. Term.** The initial term of this Lease shall be for a period of forty (40) years, which shall begin on the date specified in the notice from Lessee to the City required below (the "Commencement Date") and continuing thereafter throughout the \_\_\_\_\_ day of \_\_, 2048. Lessee shall give the City at least sixty (60) days prior written notice of the Commencement Date, which shall be the date it may commence occupancy of the Leased Property, not later than 120 days from the earlier of May 20, 2008 or the date the City completes its Master Plan for McIntire Park. The City agrees to complete such Plan and give notice to the Lessee of the site in McIntire Park on or before May 20, 2008. In the event the City fails to complete such Plan or give such notice, the area identified on the plat attached hereto as Exhibit C shall be designated as the Leased Property without further action on the part of either the City or Lessee.

**5. Rent.** The Lessee shall pay to the City nominal rent at the rate of \$1.00 per year, the receipt of which is hereby acknowledged.

6. **Use.** Subject to the Lessee's compliance with all applicable local, state and federal laws and regulations, the City hereby grants permission to the Lessee to occupy the Leased Property for the purposes of constructing and operating a fitness and recreational center with such amenities as are provided for in the Use Agreement (defined in Paragraph 7 below) (hereinafter the "Facility").

7. **Purpose.** Unless otherwise agreed by the parties, the use of the Facility shall be primarily for the benefit of residents of the City of Charlottesville and Albemarle County, and non-resident members of Lessee. The operation of the Facility, and the conducting of any programs, classes or activities on the Leased Property, shall be in accordance with a "Use Agreement" executed by the parties hereto and the County of Albemarle, which is attached hereto and incorporated herein as Exhibit B. The Use Agreement may be modified from time to time with the approval of all of the parties to the Use Agreement, provided that such modifications are in writing and signed by authorized representatives of all such parties.

8. **Construction Commencement and Completion.** If construction is not commenced within sixty (60) months of the execution of this Lease, this Lease shall terminate unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. Subject to delays beyond the reasonable control of the Lessee, the Lessee shall substantially complete construction of the Facility and obtain a Certificate of Occupancy within twenty-four (24) months of the beginning of construction, unless an extension of time is requested by the Lessee for good cause and agreed to by the City, such agreement not to be unreasonably withheld. All construction shall be conducted in such a way as to minimize disruption to other activities and uses of McIntire Park outside of the Leased Property. In the event construction materially disrupts operations of the City or other authorized users of McIntire Park outside of the Leased Property, the City may, by written order to the Lessee, require the Lessee to temporarily stop all, or any part, of the construction. Upon completion of construction, Exhibit A shall be replaced with a map showing the exact coordinates for the location of the Facility, in addition to the boundaries of the Leased Property.

9. **Quiet Enjoyment.** The Lessee, on paying the rent and observing and keeping all covenants, warranties, agreements and conditions of the Lease on its part to be kept, shall quietly have and enjoy the Leased Property and the Facility during the Lease term.

**10. Approval of Improvements.**

A. No improvements of any kind, including driveways and parking areas, shall be made to the Leased Property unless and until Lessee shall have obtained any and all required local, state and federal governmental approvals and permits, and all such improvements shall be undertaken and constructed in strict compliance with all applicable City, state and federal rules, regulations and laws.

B. The City and the Lessee acknowledge that the Lessee's intended use of the Leased Property may require a rezoning, special use permit or site plan approval for all or any portion of the Leased Property. By its execution of this Lease the City hereby evidences its written consent for Lessee to apply for and seek any and all land use and zoning approvals necessary for the future intended 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 Lessee, which is otherwise within the City's discretion to approve or deny.

C. The Lessee shall, at its own expense, engage licensed architects, engineers and other professionals as necessary to conduct all necessary site evaluations and surveys, to include, but not necessary limited to, public records, easements, utility locations, plat surveys, existing conditions surveys, soils investigations and environmental investigations. The Lessee shall produce for approval design plans and construction documents, to include specifications, site, building, traffic, roadway and parking plans. The preliminary drawings and design plan for the entire Facility shall be approved by the City Council prior to commencement of any construction. Additionally, a site plan must be approved by the City Planning Commission prior to the commencement of any construction. Such approvals by the City Council and the City Planning Commission shall not be unreasonably withheld.

D. The design and exterior appearance of the proposed Facility shall be subject to the approval of the Charlottesville City Council. Prior to the commencement of construction Lessee shall

submit to the City Board of Architectural Review ("BAR") a detailed and clear description of the exterior features of the proposed Facility, including but not limited to the general design, arrangement, texture, materials, plantings and colors to be used, and the type of windows, exterior doors, lights, landscaping, parking, signs and other exterior fixtures and appurtenances. The BAR shall, within forty-five (45) days from receipt of a complete submittal make a recommendation to the Charlottesville City Council regarding the appropriateness of the design and appearance of the proposed Facility and if a recommendation is not made, within such time period the application shall be forwarded to City Council for action. Within thirty (30) days of the earlier of (i) receipt of the recommendation of the BAR or (ii) expiration of the review period, the City Council shall approve, approve with conditions or disapprove the proposed exterior design and appearance of the Facility. Such approval by the City Council shall not be unreasonably withheld. The Lessee and the BAR or the City Council, as applicable, may mutually agree to an extension of the time limits set forth in this Paragraph.

E. If Lessee fails to obtain any of the approvals necessary to construct and operate the Facility, following diligent pursuit thereof, the Lessee may terminate this Lease without further obligation, responsibility or duty by either party hereto.

F. The City agrees to grant to Lessee standard easements to and from the Leased Property for any utility lines required to serve the Facility. Lessee shall have a right of access to and from the Leased Property over existing McIntire Park ingresses and egresses.

G. The Lessee shall have the right to place signs on the exterior of the Facility and at such other location at McIntire Park as may be permitted pursuant to the City of Charlottesville zoning ordinance.

H. Upon termination of this Lease for any cause Lessee shall remove, at Lessee's sole expense, any and all improvements made by the Lessee to the Leased Property excepting those made with the consent or approval of the City. The City shall provide thirty (30) days notice of any request to remove such improvements or to elect to keep such improvements as the City's property. In the event of removal Lessee shall be responsible for the restoration of the Leased Property to its prior condition, and if Lessee fails to do so then the City may do so and collect from Lessee the cost thereof.

**11. Existing Improvements within the Leased Property.** Lessee shall, at its own expense, be responsible for the removal and disposal of any existing structures or improvements on the Leased Property at the time of the execution of this Lease. Lessee shall be under no obligation to replace any improvements removed pursuant to this provision. In lieu of disposal by the Lessee, the City may, in its discretion, retain ownership of any materials, equipment or structures removed by the Lessee. In the event the City elects to retain ownership, any extra cost for removal over and above demolition costs shall be borne by the City.

**12. Reservation of Easements.** The City reserves to itself, while this Lease is in effect, easements over and for all existing utilities within the Leased Property, including but not limited to water, sanitary sewer, storm water sewer, electrical power and gas. At the option of the City, Lessee shall execute standard deeds of easement granting the City adequate access to any existing utilities within the Leased Property. Any relocation of existing utilities required by construction of the Facility and related improvements shall require the prior approval of the City of Charlottesville, which approval shall not be unreasonably withheld, and shall be accomplished at the sole expense of the Lessee.

**13. Existing Recreation or Parking Facilities.** All construction shall be performed in a manner so as not to materially reduce or interfere with the City's or the City Parks and Recreation Department's existing recreational or parking amenities located outside of the Leased Property at McIntire Park; provided, however, that the Lessee and the City, through its Department of Parks and Recreation, may agree on certain site or use restrictions during the construction period. The Lessee shall provide reasonable parking and roadway improvements to accommodate the construction and operation of the Facility.

**14. Title, Liens.** Title to the ground shall remain in the name of the City. Title to the Facility constructed by the Lessee shall be titled in the name of the Lessee, except as otherwise provided herein. The Lessee agrees that the Leased Property and the Facility shall not be encumbered by any mortgage,

lien (mechanic's lien, materialmen's lien or other lien), pledge other encumbrance during the term of the Lease. If any such lien or notice of lien rights shall be filed with respect to the Leased Property, the Lessee shall immediately take such steps as may be necessary to have such lien released, and shall permit no further work to be performed at the Leased Property until such release has been accomplished.

**15. Financial Assurances.** Prior to the commencement of any construction in or upon the Leased Property, the Lessee shall have entered into a written contract with a licensed and bonded Class A general contractor and shall have secured a performance bond for the entire amount of the contract, or shall have secured other contractual arrangements reasonably acceptable to the City that provide assurance that the construction will be completed. Additionally, prior to the commencement of construction, the Lessee shall present to the City Manager for his review and concurrence (a) a capital financial plan containing adequate assurance of the Lessee's ability to finance the construction of the Facility and (b) a five-year operational plan and budget that demonstrates adequate assurance that the Lessee will have available funds to support the operational plan for use and maintenance of the Facility. The Lessee acknowledges that the City is under no obligation under this Lease to provide any funding to construct, equip or operate the Facility.

**16. Maintenance / Operational Expenses.**

A. Upon the date of commencement of construction of the Facility, and continuing throughout the term of the Lease or its termination, whichever first occurs, the Lessee shall, at its own cost and expense, maintain and keep the Leased Property, whether improved or unimproved, in a reasonably clean, attractive condition, and not commit or allow any waste or damage to be committed on or to any portion of the Leased Property. The Lessee shall be responsible for all costs associated with the ongoing maintenance, operation and repair of the Facility, including but not limited to the roof, doors, windows, mechanical, utility and electrical systems, sidewalks, parking areas installed by Lessee, and landscaping. Maintenance, repair and snow removal from joint City – Lessee parking areas shall be as set forth in the joint use agreement for such areas. Lessee further agrees to abide by any duly adopted City policies, present or future, governing the use of pesticides, cleaners, fertilizers or other products at McIntire Park.

B. As part of its maintenance responsibilities Lessee agrees to comply fully with any applicable governmental laws, regulations and ordinances, limiting and regulating the use, occupancy or enjoyment of the Leased Property, and to comply with the Virginia Uniform Statewide Building Code and the Virginia Statewide Fire Prevention Code, as supplemented and modified by duly enacted ordinances of the City of Charlottesville.

**17. Utilities and Services.** The Lessee shall be responsible for and pay all costs and charges for utilities and services in connection with the Lessee's occupancy of the Leased Property including, but not limited to, permits and connection charges for gas, heat, light, water, sewer, power, telephone, cable, internet connection, janitorial, trash removal and other utilities or services. All of the foregoing utilities and services shall be instituted and obligated for in the name of the Lessee, and the City shall have no responsibility whatsoever for the furnishing or cost of the same.

**18. Taxes and Assessments.** Real property taxes shall not be imposed against the leasehold interest of Lessee if Lessee is exempt from the payment of real property taxes pursuant to Chapter 36 of Title 58.1 of the Code of Virginia (Virginia Code sections 58.1-3600 *et seq.*); provided, however, that real estate taxes on the Lessee's leasehold interest shall become due and payable at any time that Lessee is no longer entitled to a tax exemption under the laws of the Commonwealth of Virginia.

**19. [Intentionally Omitted.]**

**20. Damage or Destruction of the Leased Property.** The City shall have no responsibility for any damage caused to the Facility or the Leased Property, except that caused by the negligence or willful misconduct of the City or its employees and agents, to the extent provided by law. The Lessee agrees that all property of every kind and description kept, stored or placed in the Facility shall be at the Lessee's sole risk and hazard and that the City shall not be responsible for any loss or damage to any of such property resulting from fire, explosion, water, steam, gas, electricity, the elements or otherwise, whether or not originating in the Facility and whether or not caused by or from leaks or defects in or breakdown of

plumbing, piping, wiring, heating or any other facility, equipment or fixtures or any other similar cause or act.

**21. Indemnification.** The Lessee shall indemnify, defend and hold the City and its officials, officers and employees harmless from and against any and all liability, loss, claim, suit, damage, charge or expense suffered, sustained, incurred or in any way be subjected to, on account of death of or injury to any person and for damage to, loss of and destruction of any property whatsoever, which arises out of, results from, or is in any way connected with actions taken in the performance of the Lessee's obligations under this Lease, or which occurs as a consequence of any negligence, omission or misconduct of the Lessee and any of its contractors, subcontractors, agents or employees in the performance of the Lessee's obligations under this Lease. The City, to the extent provided by law, shall be responsible for the negligent acts, omissions or misconduct of its agents or employees.

**22. Assignment.** The Lessee shall have no right to assign, in any manner or fashion, any of the rights, privileges or interests accruing to it under this Lease to any other individual or entity, without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a proposed assignment to a successor non-profit charitable organization. In the event of assignment, the Lessee shall remain fully liable and responsible for all of the obligations imposed by this Lease unless it is otherwise agreed in writing by the City.

**23. Sublease.** The Lessee may sublet portions of the Facility subject to approval by the City. The operations of any tenant under such a sublease arrangement must be compatible with the operations of the Lessee and the intent of this Lease. Any sublease will ensure the completion of the proposed construction and continuation of any necessary utilities, maintenance and repairs. Any sublease must incorporate the terms of all contracts and agreements then in existence between the parties in connection with the Facility including the terms of this Lease.

**24. Nondiscrimination.** During the term of this Lease, the Lessee agrees that it will not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

**25. Drug-Free Workplace.** During term of this Lease, the Lessee is to provide a drug-free workplace for the Lessee's employees, and to provide notification of this policy to its employees and applicants for employment. For the purposes of this Paragraph, "drug-free workplace" means a workplace where employees are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the term of this Lease.

**26. Insurance.** Prior to commencing any construction of the Facility, the Lessee, at its sole cost and expense, shall secure and maintain throughout the term of this Lease, the following insurance coverage:

(a) Workers' Compensation Insurance. The Lessee shall maintain and require all contractors or subcontractors to maintain such workers' compensation coverage as may be required pursuant to the provisions of Chapter 8 (§65.2-800 et seq.) of Title 65.2 of the Code of Virginia, 1950, as amended.

(b) Commercial General Liability Insurance. The Lessee shall maintain and require all contractors or subcontractors to maintain, per occurrence, the following coverages: \$1,000,000 general aggregate limit (other than products/completed operations); \$1,000,000 aggregate limit products/completed operations; \$1,000,000 personal injury and advertising injury limit liability; \$1,000,000 each occurrence limit; \$100,000 fire damage limit (any one fire); and \$10,000 medical expenses limit (any one person).

(c) Fire and Extended Coverages. The Lessee shall maintain coverage against loss, damage or destruction by fire and such other hazards as are covered and protected against, at standard rates under policies of insurance commonly referred to and known as "extended coverage," as the same may exist from time to time.

Each insurance policy required by this Paragraph shall be written or endorsed so as to preclude the exercise of the right of subrogation against the City and, with the exception of Workers' Compensation Insurance, shall name the City as an additional insured. Each insurance policy required by this Paragraph also shall be endorsed to include the following clause: Should any of the insurance policies be canceled before the expiration date thereof, the issuing insurance company will endeavor to mail written notice of such cancellation to the City at least 10 days in advance. Upon receipt of any notice, verbal or written, that the said insurance is subject to cancellation, the Lessee shall immediately (within five business days) notify the City. In the event Lessee fails to comply with the requirements of this section, the City shall have the right to require the Lessee to suspend use of the Facility until such time as the requirements of this Paragraph are met.

**27. Proof of Insurance.** The Lessee shall provide the City with one or more certificate(s) of insurance confirming the insurance required by this Lease. The Workers' Compensation Insurance and Commercial General Liability Insurance certificates shall be provided to the City by the Lessee upon the Commencement Date of this Lease, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each anniversary of the Commencement Date of this Lease. The Fire and Extended Coverages certificate shall be provided to the City by the Lessee prior to the commencement of construction of the Facility, then again (without demand) on or before the expiration date of any policy and, upon request by the City, on each subsequent anniversary of the Commencement Date of this Lease. Upon demand by the City, Lessee shall furnish copies of the Lessee's insurance policies, together with the required endorsements as provided herein.

**28. Annual Report; Financial Records.** The Lessee shall prepare an annual report for presentation to the City Manager upon the anniversary of the Commencement Date of this Lease or at such time as otherwise agreed, including an operational plan and budget with at least a five-year projection. In accordance with generally accepted accounting procedures, the Lessee shall maintain books and records pertaining to the Leased Property and Facility and amounts expended by it in connection with this Lease. Upon request, the City shall be entitled, at its own expense, to obtain an audit of such books and records. Upon receipt of notice that the City desires an audit, the Lessee shall make its books and records available to the City and its auditor(s), and the Lessee shall cooperate with the audit.

**29. Default.** Each of the following occurrences relative to the Lessee shall constitute default:

- (a) Failure or refusal by the Lessee to make the timely payment of rent or other charges due under this Lease when the same shall become due and payable, provided the City has given the Lessee fifteen (15) days written notice of the same;
- (b) The filing or execution or occurrence of an insolvency proceeding by or against the Lessee; or an assignment for the benefit of creditors; or a petition or other proceeding by or against the Lessee for the appointment of a trustee or a receiver or for the liquidation of any of the Lessee's property; or a proceeding by any governmental authority for the dissolution or liquidation of the Lessee;
- (c) Failure by the Lessee in the performance or compliance with any of the terms, covenants, or conditions provided in this Lease, including provisions of the Use Agreement, which failure continues uncured for a period of sixty (60) days after written notice from the City to the Lessee specifying the items in default; provided, however, if such failure is of a type that is not reasonably capable of being cured within such sixty (60) day period, such sixty (60) day period shall be extended for so long as the Lessee is making diligent efforts to cure such default; or
- (d) Any change in the operation, charter, or ownership of the Lessee (including, but not limited to, loss of Internal Revenue Code 501(c)(3) tax-exempt status) incompatible with the purpose of this Lease, or a change, incompatible with the purpose of this Lease, in the nature of the services provided at the inception of the Lease as set forth more fully in Exhibit B).

In the event of default as defined in this Paragraph, title to the Facility shall revert automatically to the City, and the Lessee shall surrender the Facility as provided in Paragraph 32 and execute all documents deemed necessary by the City to convey title to the Facility.

**30. Eminent Domain.** In the event of termination due to any taking by eminent domain, partial or total, the City shall be entitled to receive that part of the total condemnation award or compensation for the taking which is equal or attributable to the value of the land taken, and the Lessee shall be entitled to receive the part of the award or compensation which is equal or attributable to the value of the Facility thereupon. If the taking is such that sufficient area remains for the Lessee to continue its normal operations, then the Lease shall terminate as to the part of the premises and Facility so taken, but shall remain in effect with respect to the part of the premises not taken.

**31. Termination of Lease.**

A. In the event the City chooses not to enter into a renewal of this Lease and not to enter into a new lease allowing continued operation of the Facility by the Lessee on substantially the same conditions, then (i) the City shall provide the Lessee with five years' notice of its intent not to enter into such a renewal or new lease (or shall renew this Lease for a sufficient duration to provide such five years' notice); (ii) the Lessee shall surrender the Facility as provided in Paragraph 32, and transfer title to the City at Lease termination and execute all documents deemed necessary by the City to convey title to the Facility. In the event of such termination or any agreed upon earlier termination of this Lease; the City shall compensate the Lessee in the amount of ninety percent (90%) of fair market value of the Facility as of the time of Lease termination. Nothing in this Paragraph shall be construed as granting the Lessee a lease for a period longer than forty years.

B. To calculate fair market value, the parties shall mutually determine a fair market value for the Facility, which value shall be determined as of the date of the termination of this Lease. If for any reason the parties are unable to agree upon a price, the following procedure shall apply: The City and the Lessee shall each select one qualified individual as an appraiser at each party's own expense. Said two appraisers shall determine the market value of the Facility (without adjustment for the status of the underlying real estate), including any furniture, fixtures and equipment, as of the date of the termination of the Lease, taking into consideration such factors as are generally considered in valuing similar facilities. If said appraisers are unable to mutually agree upon a fair market price for the facility, furniture, fixtures and equipment within thirty (30) days after their appointment, they shall select a third qualified appraiser and the two of the three appraisals closest in value shall be averaged, and that average shall be binding on the parties.

**32. Surrender.** Upon termination of the Lease, unless the Lease is renewed or a new Lease is granted to the Lessee pursuant to the requirements of state law, and upon payment by the City to Lessee of the amount required under Paragraph 31 above, the Lessee shall quit and surrender to the City the Leased Property and the Facility in good order and condition, except for ordinary wear and tear, free and clear of any liens or encumbrances, provided that the Lessee shall remove from the premises any personal property belonging to the Lessee (other than furniture, fixtures and equipment) or third parties, which can be so removed without material damage to the Leased Property and the Facility, and at its cost and expense shall repair any damage caused by such removal. Personal property not so removed shall become the property of the City, which may thereafter remove the property and dispose of it. Upon such termination and payment, the City may without further notice enter on, reenter, possess and repossess the Leased Property and the Facility by any necessary means, and may remove the Lessee and all other persons, and may have, hold and enjoy the Leased Property and the Facility and the right to receive all rental and other income of and from the same. The surrender of this Lease shall not work a merger and shall, at the option of the City, terminate all or any existing subleases or may, at the option of the City, operate as an assignment to it of any or all such subleases.

**33. Failure to Construct Facility or Abandonment of Use.** If the Lessee fails to substantially complete the Facility within the timeframe set forth in Paragraph 8 above, discontinues use of the Facility for the purposes as set forth in this Lease and as more particularly described in Exhibit B for a period of at least six (6) months, or willfully abandons the use of the Facility for a period of at least six (6) months prior to the expiration of the term of the Lease, the Facility shall revert automatically to the City. In such event, the Lessee shall surrender the Facility as provided in Paragraph 32 and transfer title to the City at Lease

termination, and execute all documents deemed necessary by the City to convey title to the Facility. Any period of time in which use of the Facility is discontinued or abandoned for the sole purpose of Facility maintenance, casualty repairs or improvements shall not be included in the six month period described in this Paragraph.

**34. Right of Entry.** At any time during the term of the Lease, the City shall have the right, upon prior notice to the Lessee (except in the event of an emergency), to enter the Leased Property and the Facility at all reasonable times for the purposes of inspecting the Leased Property and the Facility to ensure compliance with the terms of this Lease. Notwithstanding the City's right to inspect the Leased Property, the City shall have no obligation to inspect the same. The City's failure to detect any violation or to notify the Lessee of any violation shall not relieve the Lessee of obligations under the terms of this Lease.

**35. Waiver.** No failure on the part of the City to enforce any of the terms or conditions set forth in this Lease shall be construed as or deemed to be a waiver of the right to enforce such terms or conditions. No waiver by the City of any default or failure to perform by Lessee shall be construed as or deemed to be a waiver of any other and/or subsequent default or failure to perform. The acceptance or payment of any rentals, fees and/or charges and/or the performance of all or any part of this Lease, for or during any period(s) following a default or failure to perform by the Lessee, shall not be construed as or deemed to be a waiver by the City of any rights hereunder.

**36. Identity of Interest.** The execution of this Lease or the performance of any act or acts pursuant to the provisions hereof shall not be deemed to have the effect of creating between the Lessee and the City any relationship of principal and agent, partnership or relationship other than that of lessee and lessor.

**37. Notice.** The City's designated representative to receive all communications, claims and correspondence regarding this Lease is the City Manager, at the following address: P.O. Box 911, Charlottesville, Virginia, 22902. The Lessee's designated representative to receive all communications, claims and correspondence regarding this Lease is its Executive Director/CEO, at the following address: 442 Westfield Road, Charlottesville, VA 22901. Either party may change the designated representative or address for receipt of notices by giving notice to the other party as provided in this Paragraph.

**38. Modification or Amendment.** Any other modification or amendment of the Lease (other than for an extension or enlargement of the time or territory of the Lease, which is subject to Virginia Code section 15.2-2105) shall be binding only if approved by the Lessee and the City, and evidenced in a writing signed by each.

**39. Time of Essence.** Unless specifically provided herein to the contrary, in all instances where a party is required hereunder to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood and stipulated that time is of the essence.

**40. Cooperation.** The City and the Lessee agree to provide any further documentation or cooperate in any way necessary to carry out the basic intent of this Lease.

**41. Persons Bound.** The covenants, agreements, terms, provisions and conditions of this Lease shall bind and inure to the benefit the respective parties hereto and to their representatives, successors and (where permitted by this Lease) their assigns.

**42. Entire Agreement.** This Lease, together with the schedules, riders and exhibits, if any, attached, contains the entire agreement between the City and the Lessee. Any prior understanding or representation of any kind preceding the date of this Lease shall not be binding on either party except to the extent incorporated in this Lease.

**43. Recording.** Any party shall have the right, at its sole cost and expense, to prepare and record a Memorandum of Lease or short form of the lease in recordable form, but excluding detailed provisions of this Lease.

**44. Headings.** The section headings are for convenience only and shall not be used to explain, modify, simplify, limit, define or aid in determining the meaning or content.

**45. Interpretation.** In the event of any conflict, discrepancy or inconsistency between this document and any other documents which have been incorporated into this document by reference or made exhibits or attachments hereto, then the provisions set forth within the body of this document shall govern the parties' intent.

**46. Severability.** In the event that any term, provision or condition of this Lease, or the application thereof to any person or circumstances, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, and the application of any term, provision or condition contained herein to any person or circumstances other than those to which it has been held invalid or unenforceable, shall not be affected thereby.

**47. Governing Law.** This Lease shall be governed, construed and enforced by and in accordance with the laws of the Commonwealth of Virginia. Any suit or controversy arising under this Lease shall be litigated in the General District or Circuit Court of the City of Charlottesville, Virginia. The party prevailing or substantially prevailing in any such litigation shall be entitled to an award of its attorney's fees from the non-prevailing party.

We agree to be bound by this Lease and its terms and conditions.

LESSOR:

CITY OF CHARLOTTESVILLE

By \_\_\_\_\_

Gary O'Connell  
City Manager

Date \_\_\_\_\_

LESSEE:

PIEDMONT FAMILY YMCA, INC.

By \_\_\_\_\_

Kurt J. Krueger  
President

Date \_\_\_\_\_

\* \* \* \* \*

**USE AGREEMENT  
MCINTIRE PARK NON-PROFIT COMMUNITY RECREATION CENTER**

THIS AGREEMENT is entered into this \_\_\_\_ day of 200\_, among the **PIEDMONT FAMILY YMCA, INC.** (the "Lessee"), the **CITY OF CHARLOTTESVILLE** (the "City"), and the **COUNTY OF ALBEMARLE** (the "County").

WHEREAS, the City and the Lessee have entered into a Ground Lease dated \_\_\_\_\_, 200\_, for certain property within McIntire Park in the City of Charlottesville (the "Lease"); and,

WHEREAS, under the terms of the Lease the Lessee will construct and operate a community recreation center on the Leased Premises (the "Facility"); and,

WHEREAS, the County has agreed to make a future capital contribution of \$2,030,000 for construction of the Facility (the "County Capital Contribution"); and,

WHEREAS, the parties hereto desire to enter into an agreement that sets forth the terms, conditions and requirements for the operation of the Facility.

The Parties therefore agree that throughout the term of the Lease the Facility will be operated and managed in accordance with the following:

(1) Lessee Status: Lessee covenants that it, and any authorized or approved assignee or subtenant of Lessee, will operate the Facility as a charitable, non-profit organization.

(2) County Capital Contribution and Facility Components: The County agrees to make the County Capital Contribution and the Lessee agrees to diligently conduct a capital campaign to solicit contributions from private donors to pay for the cost of construction of the Facility. Subject to Paragraph 8 of the Lease, Lessee shall not begin construction until it has secured cash, pledges and a loan commitment sufficient to construct the following components (the "Core Components"):

- fitness center
- gymnasium (including indoor track)
- multi-purpose space (including meeting space)
- locker rooms
- child watch space
- family aquatics center

Lessee desires to raise sufficient contributions, and if successful, intends to add the following additional components (the "Additional Components"):

- licensed child care center

(3) Core Functions: Lessee agrees to provide the following programs, functions or activities at the Facility utilizing the Core Components:

(Check if to be provided)

- Youth, teen, adult and senior athletics
- Health, fitness and wellness facilities and programs
- Youth and teen life skill development
- Community and family special events
- Art, culture and enrichment programming
- Environmental education
- Outdoor adventure education
- Therapeutic recreation
- Child Watch
- Instructional / recreational / therapeutic aquatics
- Competitive / recreational / aquatics

Lessee intends to provide the following programs if sufficient funds are raised by it to construct the Additional Components:

- Licensed child care

(4) Public Access: The Facility will be open to all residents of the City of Charlottesville and Albemarle County, and any non-resident member of the YMCA. Lessee's service area, as designated by the YMCA of the USA, includes all or portions of the counties of Greene, Nelson, Madison, Fluvanna, Orange and Louisa, and residents within this service area will also have access to the Facility. Lessee shall not discriminate against any person in its membership, programs or employment because of race, religion, color, gender, sexual orientation, national origin, disability, financial circumstances or any other basis prohibited by law.

(5) Relation to McIntire Park: Lessee desires to coordinate with the City's Parks and Recreation Department in the preparation of its master plan for McIntire Park. Integration of the Facility as a component part of the larger McIntire Park will depend in large degree on the outcome of that planning process. Nevertheless, it is anticipated that the Facility can be used to enhance current annual events at McIntire Park such as the Dogwood Festival, Earth Day, and Fourth of July events by holding on such

days programs such as family open house activities, helping to coordinate outdoor activities with the Parks and Recreation Department or serving as the focal point for event coordination. Lessee also intends to offer programs and services that will take advantage of McIntire Park's inherent assets. Such programs may include walking programs for fitness for all ages using the trails and in bad weather using the Facility, summer day camps, and nature and environmental programs such as the YMCA's Earth Corps program through which YMCA member volunteers can build and maintain additional walking trails within the Park. Users of the Facility, as part of their overall fitness program, can use these trails, giving participants both an indoor and outdoor experience, and an appreciation of the Park's inherent beauty. The Facility's multi-purpose space could be used for class room space, as a meal site and provide rainy day options in connection with other Parks and Recreation Department programs at the Park. Lessee could also use the Facility in a number of different ways to bring in new events to the community such as a duathlon and other athletic events.

(6) Management of Lessee: Responsibility for the ongoing management and operation of the Facility will be vested in an Executive Director or Chief Executive Officer who will report to a Board of Directors, chaired by a volunteer President, which will function as the policy-making body of the Lessee. The City and the County will each have the right to appoint two members (four members altogether) to the Lessee's Board of Directors. The Lessee agrees to amend its Bylaws to provide that the Directors of the City and the County Parks and Recreation Departments are both invited and expected to attend each and every meeting of the Board of Directors of the Lessee until termination of the Lease. Such Directors, like the Lessee's Executive Director, shall attend such meetings in an advisory capacity and have no vote, nor any liability as directors. Lessee further agrees to actively seek and recruit residents of the City as Board members to more equally balance the residencies of the members of Lessee's Board. All members of the Board, regardless of residency, will be required to be members of the YMCA.

(7) Fee Structure: The membership and fee structure of Lessee at the time of the opening of the Facility is anticipated to be as follows, and shall be subject to change by the Lessee's Board of Directors:

	Anticipated Monthly Membership Rate upon opening	Anticipated Non-Member Daily Admission Fee upon opening
City/County Resident – Family	\$72.00	\$9.00
City/County Resident – Adult Individual (ages 24-61)	\$48.00	\$6.00
City/County Resident – Senior Individual (62+)	\$43.00	\$5.00
City/County Resident - Young Adult (19-23) Individual	\$30.00	\$4.00
City/County Resident – Teen/High School (ages 14-18)	\$20.00	\$3.00
City/County Resident – Youth (13 and under)	\$18.00	\$3.00

Reasonable membership categories, and membership, daily admission, class and program fees shall be set by the Lessee's Executive Director / Chief Operating Officer, subject to the approval of Lessee's Board of Directors. Lessee understands that there are a number of City residents who currently utilize a punch pass system to allow them to have access to Crow and Smith pools for recreational lap swimming. Lessee agrees to implement a similar system for individual recreational lap swimming in addition to its membership and program fee structure to help transition these individuals to the Facility, which system shall be phased out over a reasonably short period of time based on its actual usage.

(8) Financial Assistance: No resident of the City of Charlottesville or Albemarle County will be denied access or use of the Facility for financial reasons. The Lessee will provide financial aid based on need to any City or County resident wishing to participate as a member of Lessee, or in any class, program or activity conducted at the Facility. The process to determine eligibility for financial aid shall be simple, applicant-friendly, consistently applied and subject to approval by the Lessee's Board of Directors

to ensure both (i) the accuracy of the determinations and (ii) convenience to the applicants. Initially, and consistent with the policy of many other YMCA's, Lessee will require applicants for financial assistance to provide it with copies of such person's tax return for the prior year and last two payroll stubs. In the event the applicant does not file a tax return, Lessee will require the applicant to provide it with a letter from a federal or state agency indicating that the applicant is eligible for federal or state assistance.

The Lessee's income criteria for the granting of financial aid for reduced or free admissions or memberships are as follows:

- (i) Any individual or family living at or below the established federal poverty level will be eligible for 100% financial assistance.
- (ii) Any individual living at or above the median household income for the City of Charlottesville would not ordinarily be eligible for any financial assistance, subject to extenuating circumstances.
- (iii) To determine eligibility for financial assistance for families, an additional \$4500 per additional family member is added to the income standards used to determine eligibility.
- (iv) The Lessee's Board of Directors will establish a graded scale to determine the level of financial assistance available for those individuals and families whose means lie between the two standards of 100% to 0% assistance eligibility.

These criteria are subject to reasonable modifications from time to time by Lessee's Board of Directors. The Lessee also understands that the federal poverty level is used by the City school system to determine eligibility for certain school benefits and agrees to work with the school administrators to establish a system whereby a common application for financial assistance eligibility can be used.

(9) Hours of Operation: The anticipated hours of operation of the Facility will be as follows, subject to reasonable adjustment by the Lessee's Board of Directors:

Monday – Friday:	6:00 a.m. to 9:00 p.m.
Saturday:	6:00 a.m. to 4:00 p.m.
Sunday:	1:00 p.m. to 5:00 p.m.

(10) Community Engagement: Lessee will publicize, and participate in the efforts of the City and the County to publicize, membership benefits, programs, transportation assistance and employment opportunities at the Facility, in order to encourage use of the Facility and participation in programs by the public.

(11) Transportation and Parking: The Lessee desires that the City extend its existing bus line on Rugby Avenue into McIntire Park to serve the Facility. The Lessee will provide additional transportation assistance for programs as is reasonably feasible based upon need, insurance and operating costs and equipment available to it. The City agrees to permit users of the Facility to use the existing parking spaces in McIntire Park. Lessee will construct such additional parking spaces as is reasonably feasible based upon the size and layout of the Leased Property and as may be required by applicable zoning.

(12) Additional Provisions Related to Funding, Access and Use by City and County Residents. In the event the Lease is not renewed or is otherwise terminated, the City agrees to allow access to the Facility to County residents on the same basis in all respects as it allows access to City residents. In the event the City commits on or before May 20, 2008 to a future capital contribution of \$1,250,000 for construction of the family aquatics center, the Lessee agrees to include at least six (6) 25-yard competitive swimming lanes and a one (1) meter board and diving well and give the Charlottesville High School swim team priority access to those six lanes for practices up to two hours immediately after school classes end during the high school winter swim season, and otherwise subject to the same terms and conditions established by the Lessee with respect to other teams and programs using the pool. The Lessee further agrees that the City may deduct the funds provided by it for this purpose from any amounts owed to Lessee under Paragraph 31.A of the Lease upon termination of the Lease. The City and the Lessee further understand that the County has tentatively set aside \$1,250,000 in its CIP budget for 2012 for a competitive pool at the Facility. The City, County and Lessee agree to negotiate in good

faith prior to completion of the City's master plan for the active side of McIntire Park with respect to the building of additional swim lanes and/or a competition pool; provided, however, that in the event no agreement is reached prior to the earlier of completion of such plan or May 20, 2008, the Lessee shall have the right to move forward with construction of the Facility with the components identified in Paragraph (2) above, including in the aquatics center, if the City has committed to make the \$1,250,000 capital contribution as set forth above, at least six lanes, a 1 meter board and diving well. Lessee agrees to work with the City and County to design and implement learn to swim programs for public school students.

(13) Additional Provisions Related to Rights of County With Respect to Lease. Lessee agrees to provide the County Executive with copies of all reports and records provided to the City Manager under Paragraph 28 of the Lease, and the County shall have the same rights to audits and inspections of books and records as are provided to the City under such Paragraph. The County shall have the same right of entry as provided to the City under Paragraph 34 of the Lease. The City and Lessee agree that the Lease may not be modified in any way which lessens or adversely impacts the rights of the County or its residents hereunder. **[Insert any additional provisions required by the County and agreed to by the City and the Lessee.]**

(14) Modification: This Agreement may only be modified by written amendment executed by authorized individuals on behalf of the Lessee, the City and the County.

WITNESS the following authorized signatures:

PIEDMONT FAMILY YMCA, INC.

By: \_\_\_\_\_  
Kurt J. Krueger, President

CITY OF CHARLOTTESVILLE

By: \_\_\_\_\_  
Gary B. O'Connell, City Manager

COUNTY OF ALBEMARLE

By: \_\_\_\_\_  
Robert W. Tucker, County Executive

**ORDINANCE NO. 08-E(1)**

**AN EMERGENCY ORDINANCE CHANGING THE POLLING PLACE FOR  
THE KESWICK PRECINCT OF THE RIVANNA MAGISTERIAL DISTRICT**

**WHEREAS**, Virginia Code § 24.2-307 requires that each polling place be established by ordinance; and

**WHEREAS**, Albemarle County Code § 2-103(C)(4) establishes the Union Grove Baptist Church, 471 Black Cat Road, as the polling place for the Keswick Precinct of the Rivanna Magisterial District; and

**WHEREAS**, the Union Grove Baptist Church has sustained structural damage and is unable to serve as a polling place for the indeterminate future; and

**WHEREAS**, the Zion Hill Baptist Church, 802 Zion Hill Road, has very recently agreed to make its buildings available as a polling place; and

**WHEREAS**, after a polling place is changed by an ordinance adopted by the Board of Supervisors, the County is required to obtain a preclearance under the Voting Rights Act from the United States Department of Justice before changing a polling place and, under normal circumstances, such a change would be submitted at least ninety days prior to an election to allow the Department of Justice to review the request and to allow the Albemarle County General Registrar sufficient time to notify voters of the polling place change; and

**WHEREAS**, the presidential primary elections will be held on February 12, 2008 and there is inadequate time to provide the notice required by Virginia Code § 15.2-1427 before adopting an ordinance changing the polling place, obtaining expedited Department of Justice review, and notifying voters of the polling place change; and

**WHEREAS**, the Board of Supervisors finds that an emergency exists requiring the adoption of this Ordinance without prior public notice pursuant to Virginia Code § 15.2-1427.

**NOW, THEREFORE, BE IT HEREBY ORDAINED THAT:**

**Section 1. Change of polling place for the Keswick Precinct.**

The polling place for the Keswick Precinct of the Rivanna Magisterial District is changed from Union Grove Baptist Church, 471 Black Cat Road to the Zion Hill Baptist Church, 802 Zion Hill Road.

**Section 2. Immediate effect; emergency.**

This Ordinance shall take effect immediately, being adopted under emergency procedures pursuant to Virginia Code § 15.2-1427, and shall remain in effect not longer than sixty days unless readopted in conformity with the applicable provisions of the Virginia Code.

RESOLUTION

**Whereas**, although the Rivanna Water and Sewer Authority is now predicting that all surface water reservoirs will refill this spring without the need to continue mandatory water restrictions, there remains concern that baseline stream flows and groundwater tables continue to be below normal for this time of year; and

**Whereas**, while it is not possible to predict next summer's weather with certainty, low groundwater and stream flow during the winter indicates there could be a higher than normal potential for a severe drought next summer; and

**Whereas**, well water users draw on underground water reserves which flow into streams and feed our drinking water reservoirs and are a resource for the entire community; and

**Whereas**, excessive use of water from underground can adversely impact an individual's water supply and also downstream supplies; and

**Whereas**, it is critical for all our citizens to contribute to efforts to conserve water by using voluntary conservation measures that can have a dramatic cumulative effect in reducing demand on our local water resources;

**Now Therefore, Be It Resolved**, that the Albemarle County Board of Supervisors wishes to urge all citizens, whether on a public supply or an individual well, to continue to voluntarily practice water conservation, and to consider the probable continuing drought when making landscaping decisions. We urge the RWSA and ACSA to remain diligent in monitoring water conditions throughout 2008 in order to alert the public as early as possible if there is a return to increasing water supply risks.

**CONDITIONS OF APPROVAL ON PLANNING ITEMS**

**PROJECT: SP-2007-0038. Carrsbrook (ATC)-Verizon Tier III PWSF.**

1. All work shall be done in general accord with what is described in the applicant's request and site construction plans, entitled "Carrsbrook American Tower Corporation Compound", with a final zoning drawing submittal date of July 19, 2007;
2. The tower shall not be increased in height;
3. The additional array of panel antennas may be attached only as follows:
  - a. All equipment attached to the tower shall be painted to match the color of the tower. The cables extending from the ground equipment may remain black; and
  - b. The antennas shall be set at the minimum distance that is allowed by the mounting equipment, and in no case shall any of the new antennas project from the structure to a distance that is greater than that of the existing antennas.
4. The replacement of dishes and antennas attached to this tower may be approved administratively, provided that the sizing, mounting distances and heights of the replacement equipment are in compliance with these conditions of approval and in accordance with all applicable regulations set forth in Section 5.1.40 of the Zoning Ordinance;
5. With the exception of any safety lighting required by Federal Aviation Administration regulations, outdoor lighting shall be permitted only during maintenance periods; regardless of the lumens emitted, each outdoor luminaire that is not required for safety shall be fully shielded as required by Section 4.17 of the Zoning Ordinance;
6. No existing trees within two hundred (200) feet of the facility shall be removed for the purpose of installing the proposed antennae or any supporting ground equipment;
7. The current owner and any subsequent owners of the tower and its supporting facilities shall submit a report to the Zoning Administrator by July 1 of each year. The report shall identify each personal wireless service provider that uses the facility, including a drawing indicating which equipment, on both the tower and the ground, are associated with each provider;
8. All equipment and antennae from any individual personal wireless service provider shall be disassembled and removed from the site within ninety (90) days of the date its use is discontinued. The entire facility shall be disassembled and removed from the site within ninety (90) days of the date its use for personal wireless service purposes is discontinued. If the Zoning Administrator determines at any time that surety is required to guarantee that the facility will be removed as required, the permittee shall furnish to the Zoning Administrator a certified check, a bond with surety satisfactory to the County, or a letter of credit satisfactory to the County, in an amount sufficient for, and conditioned upon, the removal of the facility. The type of surety guarantee shall be to the satisfaction of the Zoning Administrator and the County Attorney;
9. The tower shall be limited to a total of four (4) vertical arrays of panel antennas. No additional relay, satellite or microwave dish antennas shall be permitted on the tower without an amendment of this special use permit; and
10. The special use permit must be amended to allow either of the three existing arrays of panel antennas to be:
  - a. relocated on the structure;
  - b. modified to increase the number or size of panel antennas; or,
  - c. modified to increase the distance of the panel antennas from the structure.

**Modifications:**

1. The flush mounting requirements; and
2. The tree modification plan because they are not disturbing any trees.

**PROJECT: SP-2007-41. Collin Gallahue, Violin Maker.**

1. SP-2007-41 is limited to the making, repair, and sales of musical instruments;
2. No employees shall be permitted, without approval of an amendment to this special use permit; and
3. Storage of materials shall be entirely within the accessory building, as shown on Attachment A.

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**PROJECT: SP-2007-044. SPCA Amendment.**

1. A Tree Conservation Plan shall be submitted for those areas shown as Tree Conservation Areas on the attached plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
2. At least one (1) row of screening evergreens trees shall be planted fifteen (15) feet on center along the north side of the property as shown on the attached plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
3. Fundraising activities and other special events shall not occur unless a zoning clearance has been issued by the Department of Community Development;
4. The site shall be developed in accord with the attached site plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007;"
5. Animals may be walked and/or exercised outside only between the hours of 8:00 a.m. and 7:00 p.m. While animals are outside, they must be supervised and be either on a leash if outside the fenced area or contained within a fenced area if not on a leash; and
6. Fencing shall be of the material identified and installed in the locations shown on the plan entitled "Charlottesville/Albemarle S.P.C.A. ZMA-2000-005, SP-2000-022, revised November 6, 2007."

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**PROJECT: SP-2007-048. Mt. Alto Baptist Church Building Addition.**

1. Special Use Permit 2007-48 shall be developed in general accord with the concept application plan, provided by the applicant and received February 26, 2007. However, the Zoning Administrator may approve revisions to the concept application plan to allow compliance with the Zoning Ordinance;
2. The addition shall be limited to a maximum of five hundred (500) square feet;
3. The area of assembly shall be limited to a maximum one hundred seventy-five (175) seat sanctuary; occasional church gatherings beyond the normal capacity of the sanctuary shall be permitted;
4. There shall be no day care center or private school on site without approval of a separate special use permit;
5. Construction of the addition shall commence on or before January 9, 2013 or this special use permit shall expire; and
6. All outdoor lighting associated with the addition shall be full cut-off fixtures.