




Memorandum

To: Directors of the Economic Development Authority
Jim Bowling, Counsel for the Economic Development Authority
Diantha McKeel, Board of Supervisors Liaison to the EDA

From: Roger Johnson, Director of Economic Development 

Date: 12 January 2021

Subject: Project Update – Woolen Mills Performance Agreement

Dear Economic Development Authority,

The Authority approved the Third Amended Economic Opportunity Fund Performance Agreement for the County's public-private partnership at Woolen Mills on September 29, 2020.

Enclosed is the approval for a 90-day extension of this agreement from December 31, 2020 to March 31, 2021.

CC: Jennifer Schmack, Economic Development Project Manager
Richard DeLoria, Senior Assistant County Attorney
Doug Walker, Deputy County Executive
Jodie Filardo, Director, Department of Community Development



**COUNTY OF ALBEMARLE
Economic Development Office
Community Development Department
Charlottesville, Virginia 22902**

December 18, 2020

Dear Mr. Richardson:

At the September 16, 2020 regular meeting, the Board of Supervisors passed a resolution to approve the Third Amended Agreement to Woolen Mills Economic Opportunity Fund Performance Agreement (agreement) extending the performance deadline and allowing the County Executive to approve future extensions as needed but not beyond September 30, 2021. Please accept this memo as a request to execute an extension to the agreement.

The parties, both Albemarle County staff and developer Brian Roy, would like to make changes to the performance deadline in the agreement. The relevant portion of this contractual arrangement requires the developer to install a bridge across Moores Creek, put in an accompanying trail network and provide parking by December 31, 2020. Due to the complex nature of this portion of the work, uncontrollable variables (COVID pandemic), nascent nature of P3's by both parties and permitting matters, staff and the contracting party want to extend the date of the prevailing agreement from December 31st, 2020 to March 31, 2021.

It is important to note that staff has evidence and confidence the developer is making good faith efforts to fulfil duties outlined in this contract.

Staff stands ready to answer any questions. Thank you in advance for your consideration.

Sincerely,

Roger Johnson
Director of Economic Development

Jodie Filardo
Community Development Director

CC: Don Long
Doug Walker
Trevor Henry
Greg Kamptner
Amelia McCulley
Richie Deloria



Albemarle County

County Executive Office
401 McIntire Road,
Charlottesville, Virginia 22902

Mr. Brian H. Roy
Woolen Mills LLC
1012-C Druid Avenue
Charlottesville, Virginia 22902

Re: Extension of Performance Agreement Deadline

Dear Mr. Roy:

In accordance with Section 6(F) of the Third Amended Economic Opportunity Fund Performance Agreement (approved by the Board of Supervisors on September 16, 2020) and the authority vested with me therein, I find it is reasonable and necessary to extend the December 31, 2020, deadline for fulfillment of the parking, pedestrian bridge, and trail construction obligations for 90 days. This is based upon County staff recommendation and its report that Woolen Mills, LLC, continues to make reasonable progress towards successful and satisfactory fulfillment of the agreement in those areas.

With sincere and kind regards,

Jeffrey Richardson
County Executive

pdf: Donald D. Long, EDA Chair
Albemarle County Board of Supervisors
Doug Walker, Deputy County Executive
Roger Johnson, Economic Development Director
Greg Kamptner, County Attorney
Jodie Filardo, Community Development Director

**THIRD AMENDED ECONOMIC OPPORTUNITY FUND
PERFORMANCE AGREEMENT**

This Performance Agreement made and entered into this 29th day of September, 2020, by and among the **COUNTY OF ALBEMARLE, VIRGINIA** (hereinafter the “County”), a political subdivision of the Commonwealth of Virginia, **WOOLEN MILLS LLC**, (hereinafter the “Company”) a Virginia limited liability company, and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, (hereinafter the “Authority”), a political subdivision of the Commonwealth of Virginia.

WITNESSETH:

WHEREAS, Company is the owner and developer of the property located at 2100 East Market Street and known as Albemarle County Tax Map and Parcel No. 07800-00-00-021B0 (the “Property”);

WHEREAS, the County provided one million dollars (hereinafter “County Grant”) to the Authority from the County’s Economic Opportunity Fund and the Authority provided the monies to the Company subject to the requirements set forth herein that the Company meet its public parking obligation, transit obligation, and pedestrian bridge and trail construction obligation pursuant to this Agreement; and

WHEREAS, the County, the Authority, and the Company desire to set forth their understanding and agreement as to the payout of the County Grant, the parking, transit, and pedestrian bridge and trail construction obligations of the Company, and the termination of all or part of the County Grant under certain circumstances; and

WHEREAS, the stimulation of the additional tax revenue and economic activity to be generated by the Company’s location in the County constitutes a valid public purpose for the expenditure of public funds and is the animating purpose for the County Grant.

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

Section 1. Parking and Trail Construction Obligations.

Parking Obligation. The Company shall execute, subject to the County Attorney’s approval, an agreement allowing the County and members of the public access to and exclusive use of ten (10) parking spaces on the Property (the “Parking Spaces”) by December 31, 2020. The exact location of the Parking Spaces and route of access thereto shall be determined by the Company in consultation with the County, including without limitation, Parks and Recreation and Facilities and Environmental Services staff.

Pedestrian Bridge and Trail Construction Obligation. The Company shall provide an easement of adequate area for the construction of a Class A Trail, as defined in the Albemarle County Design Standards Manual, including construction of a pedestrian bridge over Moore’s

Creek, providing a public pedestrian connection between the Property and Albemarle County Tax Map Parcel 07800-00-00-022A0. Parks and Recreation and Facilities and Environmental Services staff from the County will participate on the project team for design and precise location of the bridge and trail. Final design of the pedestrian bridge and trail connections must be approved by the County Department of Parks and Recreation and the County Engineer before construction of the pedestrian bridge and trail by the Company commences. The County Engineer shall review and approve all plans for the trail's construction before construction of the trail commences. Upon inspection and final approval by the County Engineer, the Company shall execute a deed of dedication and easement to the County. The deed of dedication and easement shall be in a form acceptable to the County Attorney.

Transit Obligation. The Company shall pay a maximum of forty thousand dollars (\$40,000.00) to the County to fulfill the first year of a five-year County obligation to fund a transit service to the Property to the extent such payment is required by a future three party agreement between WillowTree, Inc., the Company, and the County.

Section 2. County Grant

The parties acknowledge the County appropriated a grant to the Authority in the amount of one million dollars (\$1,000,000.00) within thirty days of the original Agreement between these parties dated September 18, 2019, and the Authority paid \$1,000,000.00 to the Company within thirty days of receiving the appropriation from the County.

The Company agrees that it will use the grant funds to fulfill its parking and pedestrian bridge and trail construction and transit partnership obligations.

Section 3. Clawback

Unless otherwise mutually agreed upon in writing, the Company agrees that it will fulfill its parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2020. If the Company has not fully achieved the parking, transit, and pedestrian bridge and trail construction obligations by December 31, 2020, the Company shall repay the Authority the sum of \$1,000,000.00, and the Authority shall return that sum to the County within 30 days after the Authority receives the repaid sum from the Company.

Section 4. Company Inspections.

The Company shall permit the County Engineer to inspect the construction of the trail and bridge after receiving twenty-four (24) hours' notice from the County.

Section 5. Notices.

Any notices required or permitted under this Agreement shall be given in writing, and shall be deemed to be received upon receipt or refusal after mailing of the same in the United States Mail by certified mail, postage fully pre-paid or by overnight courier (refusal shall mean return or certified mail or overnight courier package not accepted by the addressee):

If to the Company, to:

Woolen Mills LLC
Attention: Brian H. Roy
1012-C Druid Ave
Charlottesville, VA 22902

With a copy to:

Peter J. Caramanis, Esq.
Royer, Caramanis & McDonough, PLC
200-C Garrett St.
Charlottesville, VA 22902

If to the County, to:

Albemarle County Executive's Office
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Jeff Richardson

If to the Authority, to:

Economic Development Authority
Albemarle County
401 McIntire Road
Charlottesville, Virginia 22902
Attention: Rod Gentry, Chair

Section 6. Miscellaneous.

A. *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto as to the County Grant and may not be amended or modified, except in writing, signed by each of the parties. This Agreement shall be binding upon and inure to the benefits of the parties and their respective successors and assigns. The Company may not assign its rights and obligations pursuant to this Agreement without the prior written consent of the County and the Authority.

B. *Dispute Resolution:* If a dispute arises out of or relates to this Agreement, or the alleged breach thereof, and if the dispute is not settled through negotiation in 30 days; the parties agree first to try in good faith to settle the dispute by mediation, also within 30 days; before resorting to litigation. In the event that parties are unable to agree on a mediator, an experienced mediator shall be randomly selected. The mediation process shall be confidential based on terms acceptable to the mediator and/or mediation service provider.

C. *Governing Law; Venue:* This Agreement is made, and is intended to be performed, in the Commonwealth of Virginia and shall be construed and enforced by the laws of the Commonwealth. Jurisdiction and venue for any litigation arising out of or involving this Agreement shall lie in the Circuit Court of Albemarle County, and such litigation shall be brought only in that court.

D. *Counterparts:* This Agreement may be executed in one or more counterparts, each of which shall be an original, and all of which together shall be the same instrument. A scanned or electronic signature shall be as effective as an original.


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

F. *Term:* This agreement shall run from September 18, 2018 to January 29, 2021. The County Executive may provide reasonable and necessary extensions to the term and other deadlines contained herein so long as the Company continues to make reasonable progress towards successful and satisfactory fulfillment. The County Executive shall notify the Economic Development Authority of his intention to grant any extensions in advance. Any such extension must be in writing and delivered according to Section 5 but cannot extend past September 30, 2021.

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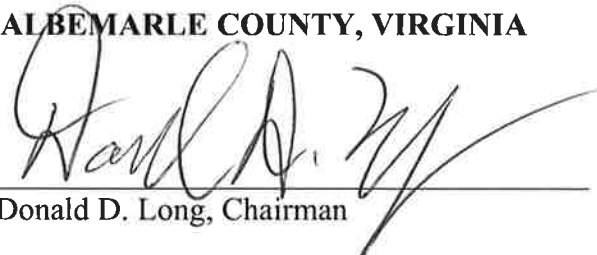
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COUNTY OF ALBEMARLE, VIRGINIA

By: 
Jeffrey Richardson, County Executive

Date: 10/14/20

ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA

By: 
Donald D. Long, Chairman

Date: 10/1/20

WOOLEN MILLS LLC

By: _____
Brian H. Roy, Manager

Date: _____

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

COUNTY OF ALBEMARLE, VIRGINIA

By: _____
Jeffrey Richardson, County Executive

Date: _____

**ECONOMIC DEVELOPMENT AUTHORITY
OF ALBEMARLE COUNTY, VIRGINIA**

By: _____
Donald D. Long, Chairman

Date: _____

WOOLEN MILLS LLC

By:  _____
Brian H. Roy, Manager

Date: September 29, 2020