

INTERIM AGREEMENT

This **INTERIM AGREEMENT** (“Agreement”) is made this ____ day of _____, 2015, by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“FCRHA”), and [CHPPENN I, LLC], a _____ (“Developer”).

RECITALS

R-1 The FCRHA is the fee simple owner of an approximately 48 acre tract of land in Fairfax County, Virginia having the Fairfax County Tax Map No. 92-4 ((1)), parcel 82A (the “Existing FCRHA Land”).

R-2 The Existing FCRHA Land is comprised of (i) the Woodley Hills Estates manufactured home community, which occupies approximately 15 of the 48 acres, and (ii) an approximately 33 acre, unimproved tract of land known as North Hill and described on Exhibit A attached hereto (such 33 acre tract, the “Property”).

R-3 In 2012, the FCRHA received an unsolicited proposal from a developer (the “Other Developer”) under the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 *et seq.* (such law, the “PPEA”) proposing to redevelop the Property as a mixed income, affordable and market rate housing community comprised of multifamily apartments and townhouses.

R-4 In accordance with the PPEA and the FCRHA’s PPEA guidelines, the FCRHA then issued a “Request for Competing Proposals”, RCP number RFCP2000000000 in 2013 (the “RCP”). The RCP included criteria calling for, among other things, (i) development of approximately 350 or more units on the Property, with the undeveloped balance to be preserved as parkland, and (ii) 10% of the total units on the Property to be affordable to households earning 30% or less of the area median income (“AMI”), 20% of the units to be affordable to households earning 50% or less of AMI, and the balance of the units to be affordable to households earning 60% of AMI up to market rate (but complying with the 80% threshold requirements under Community Development Block Grant requirements).

R-5 Developer submitted a response to the RCP (the “RCP Response”) which was determined to be the most responsive to the RCP. In its response, Developer proposed, among other things, to build approximately 329 affordable multifamily units and approximately 144 for-sale townhomes of which a portion would be affordable, as generally described on Exhibit B attached hereto (such proposed development, the “Project”).

R-6 The FCRHA and Developer desire to enter into the Agreement in order to initiate certain actions, set forth below.

R-7 Notwithstanding that a final master development agreement regarding the Project has not been executed, and with full recognition that the parties may be unsuccessful in concluding a final master development agreement regarding the Project, the FCRHA has agreed

to allow Developer to access the Property and to otherwise conduct due diligence in connection with the Project, subject to and in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the Recitals, which are incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement shall commence on the date hereof and shall terminate on the Outside Date (as defined below), if not earlier terminated in accordance with the terms herein.

2. Feasibility Period. Developer shall have until 11:59 p.m., eastern time on June 17, 2015 [NOTE: IF AGREEMENT NOT SIGNED ON 3-19-15, ADJUST DATE TO BE 90 DAYS FROM DATE OF EXECUTION **OF THIS AGREEMENT**] (the “Feasibility Period”) to conduct due diligence with respect to its RCP Response and the Project. Prior to the end of the Feasibility Period, Developer shall have the right, in its sole discretion, to terminate this Agreement by delivering a written notice to the FCRHA, together with copies of any due diligence reports or documentation concerning the Project (e.g., geotechnical, soil, and/or environmental reports) that Developer has prepared or received (the “Termination Notice”). If Developer timely delivers a Termination Notice, then this Agreement shall terminate and neither party shall have any further obligation to the other except for those obligations hereunder that expressly survive termination. If Developer fails to deliver the aforementioned diligence reports together with its written notice, Developer’s obligation to provide such reports shall survive the termination of this Agreement.

3. Further Negotiations. If Developer does not deliver a Termination Notice during the Feasibility Period, then Developer and the FCRHA shall pursue negotiations, diligently and in good faith, of one or more further agreements to effectuate the redevelopment of the Property, with the expectation of reaching agreement on the terms of another agreement by no later than December 14, 2015 [NOTE: IF AGREEMENT NOT SIGNED ON 3-19-15, ADJUST DATE TO BE 270 DAYS FROM DATE OF EXECUTION **OF THIS AGREEMENT**] (or such later date as may be mutually agreed upon in writing by the parties, the “Outside Date”). The parties recognize that the Project’s feasibility is contingent, in part, on available financing. The parties acknowledge and agree that the terms of such further agreements remain to be negotiated, but the parties currently expect the terms of such agreement to include:

a. a purchase price of \$7,000,000.00 payable by Developer to the FCRHA for the portion of the Property to be conveyed to Developer in fee simple; and

b. an annual ground rent of \$190,000.00 payable by Developer to the FCRHA for the portion of the Property to be long-term ground leased to Developer;

c. a satisfactory project phasing plan that complies with any continuing obligations of the prior Community Development Block Grant funding and provides

adequate assurances that the multifamily and affordable for-sale units will be constructed; and

d. restrictions requiring that (i) all of the multifamily units be affordable, (ii) a portion of the for-sale units be affordable, and (iii) the affordability levels comply with those set forth in the RCP and the RCP Response.

4. Developer's Due Diligence. During the term of this Agreement, Developer and its agents and contractors may access the Property upon reasonable advance notice to the FCRHA – which shall include, for purposes of this Section 4, notice to Rex Peters of Fairfax County's Department of Housing and Community Development at 703-246-5143 or rex.peters@fairfaxcounty.gov – in order to conduct such activities as Developer reasonably determines are necessary or appropriate in connection with its due diligence of the Property. Developer shall conduct such activities in a manner so as to minimize any disturbance to the residents and operations of Woodley Hills Estates. Developer shall, and shall cause any of its employees, agents, and/or contractors entering onto the Property to, deliver to the FCRHA certificates of insurance listing the FCRHA as an additional insured and evidencing general liability insurance coverage in the amount of \$1,000,000. Developer shall further (i) repair and restore any damage to the Property or the improvements thereon caused by Developer's activities (or those of its employees, agents, and/or contractors) under this sub-section, and (ii) indemnify, defend, and hold the FCRHA harmless from and against any and all liability, cost, or expense, including, **without limitation**, any damage to the Property or the improvements thereon, resulting or arising from Developer's activities (or those of its employees, agents, and/or contractors) under this section, except to the extent caused by the gross negligence or willful act or omission of the FCRHA or its agents, employees, or contractors. Developer's obligations under this Section 4 shall survive termination of this Agreement, including termination by Termination Notice. Notwithstanding anything herein to the contrary, neither this section, nor any portion thereof, nor any other provision in this Agreement shall constitute a waiver of the FCRHA's sovereign immunity.

5. Miscellaneous Provisions.

a. Binding Effect. This Agreement shall, be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Neither party hereto may assign its rights or delegate its obligations hereunder.

b. Counterparts. If this Agreement shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Agreement.

c. Headings. The section headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or the scope of any section.

d. Incorporation. The Recitals and Exhibits are hereby incorporated into this Agreement as if fully set forth herein.

e. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia.

f. Holidays, Business Days, etc. Whenever the last day for the performance of any act required by either party under this Agreement shall fall upon a Saturday, Sunday, legal holiday, or day on which the government of Fairfax County, Virginia, are generally closed for business, the date for the performance of any such act shall be extended to the next succeeding business day which is not a Saturday, Sunday, legal holiday, or day on which such bank is closed.

g. No Third Party Beneficiaries. No person or entity shall be a third party beneficiary of this Agreement.

h. Partial Invalidity. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect; and it is the intention of all the parties hereto that if any provision of this Agreement capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

i. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof. This Agreement shall not be modified, amended, or altered except by a written agreement signed by each of the parties hereto.

j. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time shall be of the essence.

k. Waiver of Jury Trial. Each party hereby knowingly waives trial by jury in any action, proceeding, claim or counterclaim brought by either party in connection with any matter arising out of or in any way connected with this Agreement, the relationship of the parties hereunder, the parties' ownership or use of the land subject to this Agreement, and/or any claims of injury or damage.

[Remainder of page intentionally left blank. Signatures appear on the following pages.]

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

FCRHA:

FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2015, by _____, [Assistant Secretary] of the Fairfax County Redevelopment and Housing Authority.

Notary Public

My Commission Expires: _____
Registration Number: _____

DEVELOPER:

[CHPPENN I, LLC], a _____

By: _____

Name:

Title:

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2015, by
_____, [TITLE] of [DEVELOPER].

Notary Public

My Commission Expires: _____

Registration Number: _____

EXHIBIT A – PROPERTY DESCRIPTION

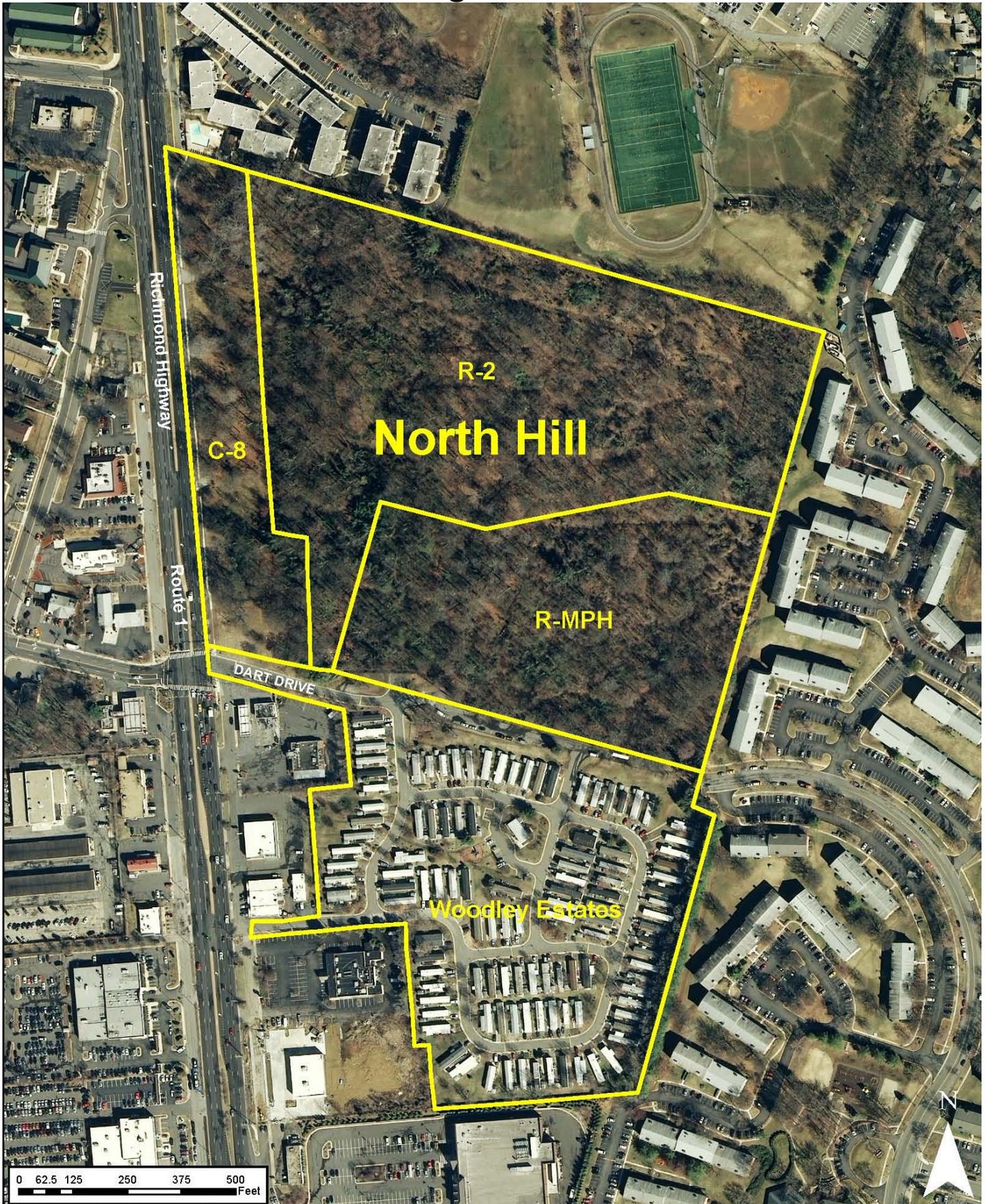
The “Property” is comprised of the parcels labeled “C-8”, “R-2”, and “R-MHP” on the attached document.

EXHIBIT B – PROJECT DESCRIPTION

Please see attached document.

North Hill

Existing Conditions



Proposed General Development Plan

