

ACTION – 1

RESOLUTION NUMBER 28-20: Authorization to Execute the Proposed Second Amendment to Comprehensive Agreement with CHPPENN I, LLC for the Redevelopment of the North Hill Property (Mount Vernon District)

ISSUE:

Following a public hearing occurring on May 18, 2020, Fairfax County Redevelopment and Housing Authority (FCRHA) authorization is requested to execute the proposed Second Amendment to Comprehensive Agreement (Second Amendment) with CHPPENN I, LLC (CHPPENN) pertaining to the redevelopment of the FCRHA-owned North Hill property in the Mount Vernon District under the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (PPEA).

RECOMMENDATION:

That the FCRHA authorize the execution of the Second Amendment, including all its exhibits.

TIMING:

Immediate. The Virginia Housing Development Authority (VHDA), which is the primary lender for the affordable component of the North Hill project, is requiring the project to close by June 9, 2020. In order to close the transactions within that timeframe, the changes to the project contained in the Second Amendment must be finalized as soon as possible.

RELATION TO THE FCRHA STRATEGIC PLAN:

This action supports the FCRHA's Strategic Plan goal to preserve, expand, and facilitate affordable housing opportunities in Fairfax County, as well as the Housing Blueprint goal of providing affordable housing for seniors and low-income residents.

BACKGROUND:

The North Hill property (Property) consists of approximately 35 unimproved acres fronting Richmond Highway in the Mount Vernon District. North Hill is part of a larger 49-acre parcel that the FCRHA acquired in 1981 through condemnation using Community Development Block Grant (CDBG) funds. In 1991, approximately 15 of the 49 acres were redeveloped into the present-day manufactured home community of Woodley Hills Estates, which consists of 115 mobile home pad sites.

In 2012, the FCRHA received an unsolicited proposal from a local developer pursuant to PPEA requirements. In accordance with PPEA requirements, the FCRHA issued a "Request for Competing Proposals." Of the responses received, the proposal from CHPPENN – a partnership between Community Housing Partners, Inc. and the Pennrose Company – was deemed best by a County Selection Advisory Committee.

On March 25, 2015, the FCRHA entered into an Interim Agreement with CHPPENN to allow them to start their development efforts by conducting due diligence on the Property. Through a series of amendments to the Interim Agreement over the past several years, the FCRHA allowed CHPPENN to pursue the land use approvals necessary for the Property's redevelopment and approved certain documentation necessary for CHPPENN to apply for low-income housing tax credits and to otherwise advance the redevelopment.

On October 24, 2019, the FCRHA entered into a Comprehensive Agreement with CHPPENN, approving the final suite of key transactional documents and re-ratifying those previously approved under amendment to the Interim Agreement.

On April 2, 2020, the FCRHA approved an amendment to the Comprehensive Agreement addressing cost increases in the project – specifically, reducing the purchase price to be paid by K. Hovnanian Homes of Northern Virginia (KHOV) as purchaser of the townhouse land bay and increasing the aggregate loan amount to be provided to CHPPENN affiliates for site work and infrastructure costs for the affordable multifamily component of the project. Following this amendment, the parties intended to close the various transactions in mid-May 2020.

In early-mid April, however, KHOV informed CHPPENN and then staff of the Department of Housing and Community Development (HCD) that, due to the economic uncertainty caused by the COVID-19 pandemic, KHOV would not be able to close on its acquisition of the townhouse land bay before late June 2020 at the earliest.

CHPPENN intends to use VHDA as its primary lender for the multifamily component of the project. VHDA, in turn, requires that the multifamily project close by June 9. (VHDA had previously required a closing in mid-May but allowed for a slight extension.) Further, the sale of the townhouse land bay must occur in conjunction with the multifamily closing, because the proceeds of the townhouse land bay will be used to fund site work and infrastructure costs of the multifamily project and the other multifamily lenders will not close until those proceeds from the townhouse land bay are available to fund those site work loans.

Accordingly, it is anticipated that the purchase contract with KHOV will terminate by May 8 and that CHPPENN and the FCRHA need to find a replacement buyer for the townhouse land bay as soon as possible. In discussions throughout the month of April, CHPPENN has proposed to have an affiliate acquire the townhouse land bay before the June 9, 2020 VHDA deadline, at the same price as KHOV (\$11,459,100) and on

otherwise substantially similar contract terms (see Attachment 3).

To be able to acquire the townhouse land bay at that price on short notice, however, CHPPENN requested a \$5,000,000.00 loan from the FCRHA. CHPPENN will fund the remainder of the purchase price with its own money, provided as an affiliate loan to the purchasing entity.

The Second Amendment would approve not only a new purchase contract to a CHPPENN affiliate – CHPPENN Land, LLC – but also a \$5,000,000.00 loan from the FCRHA to this entity, on the terms set forth on Attachment 4. The key terms of the loan are:

- 2% simple interest
- All principal and interest payments would be deferred until maturity or earlier prepayment
- Maximum term of two years, ending June 1, 2022
- FCRHA loan would initially be in first position (i.e., senior lien priority)
- FCRHA loan would be repaid in its entirety upon (1) a resale of the property by CHPPENN to a third party townhouse developer or (2) a total refinancing of the property
- CHPPENN would have the right to partially prepay the RHA loan as part of a refinancing by one or more community development finance institutions (CDFIs) and to have the remaining FCRHA loan balance subordinated to the CDFI loan(s), provided that:
 - (1) the aggregate loan amount of the CDFI loans does not exceed (A) \$8,000,000, if the refinancing happens within three months after closing, or (B) the then-appraised value of the townhouse land bay, less \$2,500,000.00, if the refinancing happens later than three months after closing;
 - (2) the remaining FCRHA loan balance is reduced to \$1,500,000.00; and
 - (3) CHPPENN and the CDFI(s) agree to reasonable subordination and intercreditor provisions, among other terms.

CHPPENN's intent is not to develop the townhouse lot itself, but rather to re-sell it to a third party townhouse developer as quickly as reasonably possible. CHPPENN continues to discuss a potential sale with KHOV, who remain interested in the property despite their inability to close by June 9.

It should be noted that the FCRHA loan to CHPPENN Land would not require any portion of the townhouse land bay to be developed as affordable housing. Rather, the loan is necessary – due to the structure of the overall transaction and the economic challenges caused by the COVID-19 pandemic – to allow the 100 percent affordable multifamily component of the project to go forward. Without the loan, there is no way to sell the townhouse land bay before June 9, and if the proceeds of the townhouse land bay sale are not available before June 9, the multifamily project will be unable to close.

It should also be noted that the entire North Hill project site is located within both a federal "Opportunity Zone" as well as an area designated by the Board of Supervisors in 1979 as a "Redevelopment Area," and thus redevelopment of the North Hill site will further the FCRHA's redevelopment mission as well.

STAFF IMPACT:

Leading up to the request for scheduling of the Public Hearing on the proposed Second Amendment, staff has worked with CHPPENN I, LLC and legal counsel on negotiating the Second Amendment. If, following the Public Hearing on May 18, 2020, the FCRHA authorizes the execution of the Second Amendment, the Assistant Secretary will execute the proposed Second Amendment, and HCD staff will work to implement the Second Amendment and related agreements.

FISCAL IMPACT:

There are no material new fiscal impacts from the new purchase contract with CHPPENN Land; the purchase price and other material terms remain the same as with the KHOV contract.

However, in order to allow CHPPENN time to negotiate a contract with a new third-party developer for the market rate townhouse portion of the project, a temporary loan will be required. The requested loan amount would be for \$5,000,000 and will be funded by the Private Finance Fund; Fund 810-C81050 for \$3,400,000 and the FCHRA Operating Fund; Fund 810-C81000 for \$1,600,000. The Private Finance Fund has an available cash balance, as of May 1, 2020, of approximately \$3,404,137 and the FCRHA Operating Fund has project reserves to cover this need.

The loan is intended to be repaid within two years and the additional terms of this loan are set forth on Attachment 4.

ENCLOSED DOCUMENTS:

Attachment 1: Resolution Number 28-20

Attachment 2: Second Amendment to Comprehensive Agreement

Attachment 3: Agreement of Purchase and Sale

Attachment 4: Term Sheet for \$5,000,000 Loan to CHPPENN Land

STAFF:

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