

INFRASTRUCTURE DEVELOPMENT AGREEMENT

by and between

**BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
as Owner**

and

**WESLEY HAMEL LEWINSVILLE LLC,
as Developer**

FOR THE DEVELOPMENT

OF

**8.65 ACRES OF LAND IN MCLEAN, VIRGINIA
FAIRFAX COUNTY, VIRGINIA
TAX MAP # 0303 01 0042**

Dated as of _____, 2015

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INFRASTRUCTURE DEVELOPMENT AGREEMENT

This Infrastructure Development Agreement (this **Agreement**) is dated as of the ____ day of ____, 2015 (the **Agreement Date**), by and between the BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a body corporate and politic, in its proprietary capacity as the owner of certain land in Fairfax County, Virginia and not in its governmental or regulatory capacity (**Owner**) and WESLEY HAMEL LEWINSVILLE LLC, a Virginia limited liability company (together with its permitted successors and assigns, **Developer**) Owner and Developer are sometimes referred to individually as a **Party**, and collectively as, the **Parties** under this Agreement.

RECITALS:

- R-1. Owner is the fee simple owner of a 8.65 acre tract of land in McLean, Virginia, having an address located at 1609 Great Falls Street, McLean, Virginia, and further described as Fairfax County Tax Map ID number 0303 01 0042, upon which a senior center and day care center are built and which are commonly referred to as the Lewinsville Senior Center and Day Care Center (the **Property**).
- R-2. The Property currently consists of a twenty-two (22) unit senior living facility, an adult day care center, two separate child day care centers and adjacent athletic fields.
- R-3. On February 9, 2004, Owner, in its regulatory capacity, approved Special Exception Amendment SEA 94-D-002 and 2232 D-03-09 (collectively, the **2004 Special Exception Amendment**), which permitted the construction of a redesigned 52,500 square foot building (the **Originally Contemplated Senior Residential Facility**), in addition to the existing 38,355 square foot Lewinsville Senior Center and Daycare Center (the **Existing Senior and Daycare Center**). The Originally Contemplated Senior Residential Facility, if constructed, would have provided for a sixty (60) bed assisted living facility with commercial kitchen and dining facility. Additionally, the 2004 Special Exception Amendment provided: (i) that the facilities in the adult day care center within the Existing Senior and Daycare Center were to expand to accommodate an increase from sixty-five (65) to eighty (80) adults; and (ii) that the senior center within the Existing Senior and Daycare Center was to expand to accommodate an increase from seventy-five (75) to eighty (80) adults and provide a family respite center to serve seniors with Alzheimer's disease.
- R-4. Pursuant to that certain Request for Proposal Number RFP-2000000263, issued May 14, 2012 in accordance with the provisions granted by the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (2012) (such Request for Proposal, as subsequently amended by certain addendums, collectively, the **RFP**), Owner desired to enter into a contract with a developer to: (i) act as agent for Owner to take the necessary steps to file an amendment to the 2004 Special Exception Amendment that allows for the development described in (ii) and (iii) hereafter; (ii) raze the Existing Senior and Daycare Center and design and construct a replacement facility

(hereafter referred to as, the **“Senior and Daycare Center”**) on the Property to be owned and operated by Owner; and (iii) design, develop, construct own and operate, as provided herein, a senior residential facility (hereafter referred to as the **“RFP Senior Independent Living Residence”**) instead of the Originally Contemplated Senior Residential Facility, which will contain up to eighty (80) affordable senior units on the Property under a long term ground lease from Owner.

- R-5. The RFP further provided that Owner reserves the right to select a developer to design, develop and construct: (i) the infrastructure (including, without limitation, roads, drive aisles, parking, curb cuts, sewer, electricity and other utilities from the closest point of public access to the Property and storm water management facilities) for the entire Property (the **“Infrastructure Improvements”**); (ii) the Senior and Daycare Center; (iii) the RFP Senior Independent Living Residence; or (iv) any combination of (i), (ii) and (iii) herein. The term **“Infrastructure Improvements,”** when referencing the portion of the Property that is allocated for the Senior and Daycare Center, means those improvements which are necessary to make that portion of the Property a **“pad ready site”** for the construction of the Senior and Daycare Center.
- R-6. Developer submitted a response to the RFP (as amended, the **“Developer Response”**) which was determined by Owner to be the most responsive to the RFP. The Developer Response proposed up to eighty-two (82) affordable senior units (the **“Senior Independent Living Residence”**).
- R-7. The land entitlement, design, development and construction of the Infrastructure Improvements, the Senior and Daycare Center and the Senior Independent Living Residence on the Property is collectively referred to as the **“Day Care Centers and Senior Residence Project”**.
- R-8. In furtherance of the Day Care Centers and Senior Residence Project, Owner and Developer entered into that certain Interim Agreement dated July 30, 2014 (the **“Interim Agreement”**) in order to proceed with the design- and entitlement-related work on the Property.
- R-9. Owner appointed Developer as its agent under the Interim Agreement for the limited purpose of: (i) obtaining a Special Exception Amendment (**“SEA”**) (as defined in the appropriate regulations promulgated by the Fairfax County Department of Planning and Zoning) for the Day Care Centers and Senior Residence Project; (ii) pursuing an approved site plan for the Day Care Centers and Senior Residence Project (the **“Site Plan”**), which would include at least a first submission to the Fairfax County Department of Public Works and Environmental Services for review; and (iii) any other regulatory approvals in connection with (i) and (ii) herein, *but excluding* regulatory approvals for the Senior and Daycare Center which are unrelated to the Infrastructure Improvements (sub-clauses (i), (ii) and (iii) in this Recital being collectively referred to as the **“Development Approvals”**).
- R-10. The Interim Agreement further provides that Owner may elect: (i) to have Developer to design, develop and construct the Senior and Daycare Center; (ii) to allow for Owner to

develop the Horizontal Project (defined below) in the event Developer is not awarded LIHTCs by the Outside Date (as each such term is defined in the Interim Agreement).

- R-11. Owner has determined it is in its best interest not to exercise either of its election rights set forth in Recital 10 above.
- R-12. The Parties desire to enter into this Agreement to provide for Developer to (i) raze the Existing Senior and Daycare Center, and (ii) design, develop and construct the Infrastructure Improvements and undertake certain other actions as set forth in the Development Plan (defined below) and in this Agreement (collectively, the **“Horizontal Project”**).

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, Owner and Developer, intending to be legally bound, do hereby covenant and agree as follows:

ARTICLE 1. RECITALS; DEFINITIONS

Section 1.01. Recitals Incorporated. The foregoing recitals are incorporated herein by reference and made a part of this Agreement

Section 1.02. Definitions. The capitalized terms used in this Agreement shall, unless the context otherwise requires or such capitalized terms are defined elsewhere (as this Agreement shall direct), have the meanings set forth herein:

“ADA” shall have the meaning provided in Section 13.20.

“Agreement” shall have the meaning set forth in the Preamble of this Agreement.

“Agreement Date” shall have the meaning set forth in the Preamble of this Agreement.

“Bid Documents” shall have the meaning provided in Section 5.02.

“Bond Application Package” shall have the meaning provided in Section 2.13.

“Cause” shall have the meaning provided in Section 9.01.

“Certificate of Completion” shall mean a letter from the Lead Engineer to Developer and Owner, in a form reasonably acceptable to the Parties, certifying that Substantial Completion of the Horizontal Project has occurred.

“Certification(s)” shall have the meaning provided in Section 6.01(b).

“Commencement of Construction” shall mean the date that construction on the Horizontal Project is scheduled to commence in the Development Schedule, subject to extension by Force Majeure Delays and the Tolling Period.

Common Infrastructure Improvements shall mean the Infrastructure Improvements that are for the benefit of the entire Horizontal Project, as more particularly identified in the Development Plan and the Project Documents.

Consultants shall have the meaning provided in Section 2.04(a).

Contractor shall mean Hamel Builders, Inc. (subject to Article 5 below) or such other general contractor that is retained by Developer pursuant to the GC Contract to construct the Infrastructure Improvements.

County or **Fairfax County** shall mean Fairfax County, Virginia, in its governmental capacity (not in its proprietary capacity).

Day Care Centers and Senior Residence Project shall have the meaning set forth in the Recitals.

Default Notice shall have the meaning provided in Section 9.03(a).

Developer shall have the meaning set forth in the Preamble of this Agreement.

Developer's Cost Allocation shall have the meaning provided in Section 3.02.

Development Approvals shall have the meaning set forth in the Recitals.

Development Budget shall have the meaning provided in Section 3.02.

Development Fee shall have the meaning provided in Section 6.03.

Development Plan shall have the meaning provided in Section 3.01(a).

Development Schedule shall have the meaning provided in Section 3.01(b).

Eligible Work shall have the meaning provided in Section 6.01(b).

Environmental Conditions Reports shall have the meaning provided in Section 2.21.

Environmental Law or **Environmental Laws** shall mean any **Super Fund** or **Super Lien** law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to or imposing liability or standards of conduct concerning any Hazardous Substances as may now or at any time hereafter be in effect, including the following, as the same may be amended or replaced from time to time, and all regulations promulgated thereunder or in connection therewith: the Super Fund Amendments and Reauthorization Act of 1986 (**SARA**); the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (**CERCLA**); the Clean Air Act (**CAA**); the Clean Water Act (**CWA**); the Toxic Substances Control Act (**TSCA**); the Solid Wastes Disposal Act (**SWDA**), as amended by the Resource Conservation and Recovery Act (**RCRA**); the Hazardous Waste Management System; and the Occupational Safety and Health Act of 1970 (**OSHA**).

“Existing Senior and Day Care Center” shall have the meaning set forth in the Recitals.

“Extended Outside Date” shall have the meaning provided in Section 2.15(b).

“Final Completion” shall mean the date when all of the following have occurred: (i) Substantial Completion of the Horizontal Project; (ii) either (A) there are no existing mechanics’ laborers’ or materialmen’s liens or similar encumbrances related to the initial construction of the Horizontal Project or (B) any existing mechanics’ laborers’ or materialmen’s liens or similar encumbrances related to the initial construction of the Horizontal Project are being contested by Developer in accordance with the provisions of this Agreement; and (iii) all payment and performance bonds which are directly related to the Horizontal Project and required to be obtained pursuant to Section 2.13 below have been released, *provided however*, not including any payment or performance bonds that cannot be released until the Daycare Centers and Senior Residence Project has been substantially completed.

“Final Completion Date” shall mean the date which Final Completion has occurred, as initially established in the Development Schedule, (subject to any permitted extensions under this Agreement (including without limitations, any Force Majeure Delay(s), and Tolling Period)).

“Financing Plan” shall have the meaning set forth in the Section 4.01.

“Funding Sources” shall have the meaning set forth in the Section 4.01.

“Force Majeure Delay(s)” shall have the meaning set forth in the Section 13.03.

“GC Contract” shall mean a contract between Developer and Contractor for the development and construction of the Infrastructure Improvements.

“Governmental Authority (Authorities)” shall mean the United States of America, the Commonwealth of Virginia, Fairfax County, Fairfax County Department of Housing and Community Development and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having lawful jurisdiction over the Property or any portion thereof. The term Governmental Authority shall also mean and include the Board of Supervisors of Fairfax County, Virginia, when acting in its governmental capacity, but not in its proprietary capacity.

“Ground Lease” shall mean that certain Deed of Lease between Owner and Wesley Lewinsville Limited Partnership, a Virginia limited partnership for the portion of the Property where the Senior Independent Living Residence will be located and entered into in connection with this Agreement.

“Guarantor” shall have the meaning set forth in the Section 10.01.

“Guaranty” shall have the meaning set forth in the Section 10.01.

“Hazardous Substances” shall mean and refer to: (i) asbestos or asbestos-containing material or polychlorinated biphenyl material, as defined under any federal, state or local law,

that may require remediation under Environmental Laws (ii) hazardous substances, toxic substances or hazardous waste, as defined under any federal, state, or local law, that may require remediation under Environmental Laws (other than quantities of such substances, including gasoline, diesel fuel and the like, as are customary and necessary to prosecute construction of the Horizontal Project), or (iii) soil containing volatile organic compounds, as defined under any federal, state or local law, that may require remediation under Environmental Laws.

“**Horizontal Project**” shall have the meaning set forth in the Recitals.

“**Infrastructure Improvements**” shall have the meaning set forth in the Recitals, and are more particularly set forth in the Development Plan.

“**Interest Rate**” shall mean a rate of interest on any outstanding sum due hereunder equal to the greater of: (a) twelve percent (12%) per annum, compounded monthly, or (b) the highest interest rate permitted by the laws of the jurisdiction where the Horizontal Project is located.

“**Interim Agreement**” shall have the meaning set forth in the Recitals.

“**Lead Engineer**” shall mean VIKA Virginia, LLC, a Virginia limited liability company.

“**Lead Engineer’s Contract**” shall mean the contract between Developer and the Lead Engineer for the Site Plan and design of the Infrastructure Improvements (but excluding any work related to the Senior Independent Living Residence).

“**LIHTCs**” shall mean nine percent (9%) low income housing tax credits obtained from VHDA in accordance with its rules and regulations.

“**Major Subcontractor(s)**” shall have the meaning provided in Section 2.05.

“**Milestone Dates**” shall mean the corresponding date by which a Milestone must be achieved as set forth on Exhibit D.

“**Milestone(s)**” shall mean the events described in Exhibit D.

“**Monthly Draw Request**” shall have the meaning provided in Section 6.01(b).

“**Other Contractor(s)**” shall mean contractors (other than Contractor), consultants and professionals that are retained by Developer (with Owner’s approval in accordance with Section 5.02 to the extent such Other Contractor is a Major Subcontractor hereunder), in connection with the design and construction of the Infrastructure Improvements.

“**Outside Date**” shall have the meaning provided in Section 2.15(b).

“**Owner**” shall have the meaning set forth in the Preamble of this Agreement.

“**Owner Change Order**” shall mean an Owner requested change order and not a change order that is necessitated due to errors or omissions by the Lead Engineer, Contractor or the Major Subcontractors.

“Owner’s Cost Allocation” shall have the meaning provided in Section 3.02.

“Owner’s Cost Cap” shall mean the amount of the total amount of Owner’s Cost Allocation of the Project Costs, which may not exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000); *provided however*, that the amount of the Owner’s Cost Cap may be increased by Owner, in Owner’s sole and absolute discretion, in writing to Developer from time to time.

“Parties/Party” shall have the meaning set forth in the Preamble of this Agreement.

“Permits” shall mean all permits, licenses, conditional use permits, zoning rights, easements, approvals, entitlements, certificates and other authorizations required (whether already issued or to be obtained) in connection with the construction, development and excavation of the Infrastructure Improvements, including (1) any development agreement, indemnity, surety or performance bond or other similar assurances to any Governmental Authorities in connection with the obtaining of entitlements or other governmental approvals for the Infrastructure; (2) any easements, approvals, utility connection permits, or requirements to obtain utilities and access; (3) any subdivision or parcel map required in connection with any development, sale, lease or financing; (4) any approvals required under applicable laws, including Environmental Laws and zoning laws; and (5) all approvals required by any Governmental Authorities with jurisdiction over the Infrastructure Improvements.

“Plans and Specifications” shall mean the design, plans, specifications and construction drawings, as applicable, for the development and construction of the Horizontal Project at any given period from schematic design plans through final construction documents at Site Plan Approval.

“Pre-Existing Environmental Conditions” shall have the meaning provided in Section 2.21.

“Preliminary Development Budget” shall have the meaning provided in Section 3.02; *provided further*, that any reference to “Development Budget” in this Agreement that occurs prior to Developer being awarded LIHTCs as provided herein and in Developer’s Financing Plan shall also be read to mean “Preliminary Development Budget”.

“Preliminary Site Plan” shall mean any version of the site plan (prior to Site Plan Approval) for the Horizontal Project which is submitted to the Fairfax County Department of Public Works and Environmental Services (or similar County agency) for purposes of obtaining Site Plan Approval. After Site Plan Approval, the Preliminary Site Plan shall become the “Site Plan” as defined in this Agreement.

“Proffer Allocation Agreement” shall have the meaning provided in Section 3.03.

“Project Contracts” shall mean the Lead Engineer’s Contract, the GC Contract, the contracts with Major Subcontractors and the contracts with Other Contractors (including without limitation, contracts for utility and internet services with local utility providers).

“Project Costs” shall mean all costs and expenses for the design, construction and development of the Infrastructure Improvements as set forth in the Development Budget, including, without limitation, all amounts due under the Lead Engineer’s Contract, contracts with Consultants, the Project Contracts, any change orders, the Development Fee and all other costs and expenses set forth or arising out of the Development Budget (including without limitation, costs and expenses for utilities and internet services with local utility providers), *provided however*, the Parties acknowledge and agree that certain of the Project Costs related to the Lead Engineer’s Contract, Site Plan and SEA have already been paid by the Developer and the County under the Interim Agreement, and such Project Costs shall not be “double counted” against either Party by the inclusion of any line-item in the Development Budget.

“Project Savings” shall have the meaning provided in Section 6.05.

“Project Documents” shall mean this Agreement, the Development Plan, the Development Schedule, the Development Budget, the Preliminary Site Plan, the Site Plan and Plans and Specifications and any related agreements, documents and instruments for the Horizontal Project which provide additional information, specification or clarification of any of the foregoing.

“Property” shall have the meaning set forth in the Recitals.

“Punch-list Items” shall mean item (i) and (ii) under definition of “Substantial Completion.”

“Reciprocal Easement Agreement” shall have the meaning provided in Section 3.03.

“Relocation Plan” shall mean the plan for relocation of the services provided by the Existing Senior and Day Care Center, including without limitation, the housing of residents therein. The Relocation Plan, as approved by Owner under the terms of the Interim Agreement, is attached hereto as Exhibit E, and made a part hereof.

“SEA” shall have the meaning set forth in the Recitals.

“Selection Criteria” shall have the meaning provided in Section 5.02.

“Senior and Daycare Center” shall have the meaning set forth in the Recitals.

“Senior and Daycare Center Infrastructure Improvements” shall mean the Infrastructure Improvements that are solely for the benefit of the Senior and Daycare Center, as more particularly identified in the Development Plan and Project Documents.

“Senior Independent Living Residence” shall have the meaning set forth in the Recitals.

“Senior Independent Living Residence Infrastructure Improvements” shall mean the Infrastructure Improvements that are solely for the benefit of the Senior Independent Living Residence, as more particularly identified in the Development Plan and Project Documents.

“**Site Plan**” shall have the meaning set forth in the Recitals.

“**Site Plan Approval**” shall mean a Preliminary Site Plan for the Day Care Centers and Senior Residence Project is approved as final and complete by the Fairfax County Department of Public Works and Environmental Services (or similar County agency), subject to posting of bonds required by Governmental Authorities and paying the applicable fees.

“**Substantial Completion**” or “**Substantially Complete(d)**” shall mean that the Horizontal Project has been completed in substantial accordance with the Project Documents therefore and a Certificate of Completion has been issued for the Infrastructure Improvements, subject only to (i) minor matters that do not materially adversely affect the use of the Infrastructure Improvements (or component thereof) for their intended purpose and which have been identified by Developer and Owner, with input from Lead Engineer, on a “punch-list,” and to (ii) items of exterior landscaping that cannot then be completed pending appropriate seasonal opportunity and which have been identified by Developer and Owner on the “punch-list,” which shall be determined separately for the Infrastructure Improvements. Any release of payment and performance bonds required by Fairfax County or any Governmental Authority that is an agency, department, commission, board, bureau, instrumentality or political subdivision of Fairfax County is expressly excluded from the definition of Substantial Completion.

“**Term**” shall have the meaning provided in Section 2.15.

“**Termination Notice**” shall mean a written notice of a party’s election to terminate the Agreement specifying the date upon which the Agreement will terminate, which date will be determined as set forth in this Agreement or by such party in its discretion, but will not be earlier than the date the notice is given.

“**Tolling Period**” shall have the meaning provided in Section 2.15(b).

“**VHDA**” shall mean the Virginia Housing Development Authority.

“**Work**” shall mean the design, development and construction of the Horizontal Project.

ARTICLE 2. DEVELOPER’S SCOPE OF WORK

Section 2.01. Appointment. Owner hereby engages Developer to perform the duties and services of Developer set forth herein, and Developer hereby agrees to perform such duties and services, all in accordance with the terms and conditions of this Agreement. Developer shall be an independent contractor and nothing contained in this Agreement shall be construed to create a partnership or joint venture relationship between Owner and Developer.

Section 2.02. Duties of Developer - General. Subject to the payment by, and other obligations of Owner as provided in this Agreement, Developer shall manage each of the following in accordance with the terms of this Agreement: (a) obtaining the Development Approvals, (b) design and develop the Infrastructure Improvements, (c) the performance of the services and responsibilities with respect to the construction of the Infrastructure Improvements as set forth herein, and (d) the performance of such additional management services as are

reasonably within the general scope of such services, subject to the approval of Owner where and as hereinafter described.

Section 2.03. Development Approvals; Interim Agreement.

(a) Special Exception Amendment. Obtaining the SEA approved by the appropriate Governmental Authorities shall occur prior to or concurrently with the execution of this Agreement pursuant to the terms of the Interim Agreement and is a condition precedent/concurrent to the execution of this Agreement.

(b) Site Plan Approval. Developer shall obtain the Site Plan Approval for the Day Care Centers and Senior Residence Project on or before the Milestone Date therefor, as set forth on Exhibit D attached hereto. At the request of Developer, Owner shall execute and deliver to Developer or such other Person (including Tenant) designated by Developer or the appropriate Governmental Authorities designated by Developer, all reasonably requested applications, affidavits, proffers, plats, plans, and any other documentation in connection with the Site Plan Approval within ten (10) business days after Owner's receipt of request therefor. Developer shall advise Owner in connection with the process necessary to obtain the Site Plan Approval for the Day Care Centers and Senior Residence Project.

(c) Interim Agreement. Until the earlier to occur of: (i) the Development Approvals have been obtained by Developer; or (ii) Milestone Date has not been met by Developer that results in a termination of this Agreement under Article 9, the Interim Agreement shall remain in full force and effect with respect to the Development Approvals (including without limitation, all matters related to the Preliminary Budget, County Costs and the Completion Guaranty (each as defined in the Interim Agreement)), provided however, that as of the Agreement Date, Section 5 and Section 6 of the Interim Agreement shall be null and void and of no further force or effect (having been superseded by the terms of this Agreement). In the event of a conflict between the terms of the Interim Agreement and this Agreement, this Agreement shall control.

Section 2.04. Design. During the Term, as applicable, Developer shall:

(a) manage and oversee Lead Engineer with respect to design of the Horizontal Project. Further, it is anticipated that Lead Engineer will retain as consultants the architectural, engineering and design firms specialized in relevant disciplines for the Horizontal Project, as may be required to perform the design and development services required for the Horizontal Project (the "Consultants"). Developer shall be responsible for the overall coordination of such selection process, including evaluating the fees of Consultants, advising Lead Engineer on the selection of Consultants and assisting Lead Engineer, as applicable, in negotiating definitive agreements with Consultants. Developer shall work with Lead Engineer to coordinate the architectural and design process, including monitoring of Lead Engineer and its Consultants through Site Plan Approval;

(b) coordinate and schedule with Lead Engineer in order for Lead Engineer to generate and to provide regular periodic review of the Preliminary Site Plan, as it is developed throughout the design process;

(c) coordinate and schedule with Lead Engineer and, if applicable, Consultants to submit (or re-submit) for Owner's review and approval upon completion of each Preliminary Site Plan submitted for Site Plan Approval. Within fifteen (15) business days of receipt of each of the foregoing items, Owner shall state in writing to Developer that each of such submittal is approved or shall provide detailed comments as to the specific revisions that Owner desires be made thereto in order for Owner to approve such submittal;

(d) coordinate and schedule with Lead Engineer to meet periodically, at reasonable intervals and times, with Owner to review the then current Preliminary Site Plan, to discuss any proposed changes to the Preliminary Site Plan requested by or required by Developer or by Owner and advise Owner if any such changes are impracticable in light of the other budget or scope constraints established under the Project Documents;

(e) discuss with Owner and provide information reasonably necessary to assist Owner in evaluating any proposed revisions to the Development Schedule, or promptly advise Owner if any such required revisions to the Development Schedule are impracticable in light of the other budget or scope constraints established under the Project Documents and, to the extent that it is necessary to modify the Development Schedule, advise Owner with respect to the revisions that should be made;

(f) advise and consult with Owner and provide information reasonably necessary to assist Owner in evaluating any proposed revisions the Development Budget;

(g) coordinate and consult with Owner's cost estimator (including any third-party cost estimator hired by Owner) to obtain and agree upon cost estimates and prepare revisions to the Development Budget based on such estimates;

(h) coordinate and consult with Lead Engineer and Contractor to prepare a value engineering analysis and provide information reasonably necessary to assist Owner in analyzing the Preliminary Site Plan and work with Owner's professionals regarding same. To the extent modifications to the Work or Owner Change Orders are requested by Owner, Developer shall make appropriate revisions to the Project Documents, or promptly advise Owner if any such requested revisions are impracticable under the Owner's Cost Cap or other budget, timing or scope constraints established under the other Project Documents, and, if applicable, work with Lead Engineer and Contractor to revise the Preliminary Development Budget. The foregoing process shall be repeated prior to each submission of a Preliminary Site Plan which would result in a change to the Preliminary Development Budget until Site Plan Approval has occurred;

(i) coordinate with any third-party consultants engaged by Owner to assist in the review and approval of any Project Documents;

(j) evaluate any proposed revisions to the Development Budget and the overall scope of the Work, or promptly advise Owner if any such required revisions to the Development Budget or scope of the Work are impracticable in light of the other budget or scope constraints established under the Project Documents;

(k) advise Owner in connection with the selection of a Contractor and negotiate and execute the GC Contract based on the Project Documents in accordance with Section 5.02;

(l) coordinate and schedule with Contractor and Lead Engineer to obtain all Permits (subject to obtaining Owner's execution of any applications or documentation and posting of bonds required by Governmental Authorities related to such Permits) necessary to construct the Infrastructure Improvements;

(m) coordinate with Lead Engineer, Contractor and Consultants in order that Lead Engineer and Contractor comply with all laws, rules, codes and regulations applicable to the Horizontal Project;

(n) obtain and evaluate, through appropriate Consultants, environmental and neighborhood impact studies or reports, engineering surveys, environmental reports, soil tests, and such other tests and reports as may be necessary or advisable in connection with the design, development and construction of the Infrastructure Improvements; and

(o) to provide information necessary to assist in establishing insurance requirements for Owner, Developer, Lead Engineer, Consultants, Contractor and other Persons, as applicable, in connection with the design, development, construction and testing of the Infrastructure Improvements, and evaluate and confirm the adequacy and conformance of any proposed insurance policies with the insurance requirements set forth in or established pursuant to this Agreement.

Section 2.05. Contractor; Major Subcontractors; Other Contractors. Developer shall be responsible for the evaluation and recommendation of, and coordination, administration, monitoring and management of, the following: Contractor, Major Subcontractors and any Other Contractors engaged to perform services in connection with the design, development and construction of the Infrastructure Improvements; and Developer shall consult with Owner on such matters. Any Other Contractor or subcontractor under the GC Contract (including without limitation, subcontractors for civil, mechanical, electrical, plumbing, excavation, concrete, dewatering, stormwater management, sanitary sewers, water mains, grading, paving, curbs, gutters or any traffic signals) whose contracts represent more than five percent (5%) of the Development Budget; are sometimes referred to as the "Major Subcontractors". Final selection of Major Subcontractors is subject to the mutual approval of Owner and Developer and is subject to Section 5.02 below. Developer may not enter into or approve on Owner's behalf any modification of any of the Project Contracts, except for change orders with the prior approval of Owner in accordance with this Agreement. Notwithstanding the foregoing, Developer may approve, without Owner's prior approval: (i) changes which do not affect Owner's Cost Allocation in the Development Budget and do not have a material effect on the use and utility of the Common Infrastructure Improvements or the Senior and Daycare Center Infrastructure Improvements, (ii) minor field changes or other changes that do not materially affect scope, time or aesthetic appearance and do not require modification of any Project Contract or the Project Documents, or (iii) modifications necessitated by emergencies (in the case of emergencies, Developer shall seek the prior verbal approval of Owner whenever possible); provided, that any such changes or modifications pursuant to the foregoing clauses (ii) and (iii) will be confirmed in writing to Owner as soon as reasonably possible.

Section 2.06. Relocation Plan. Prior to the commencement of any construction Work on the Horizontal Project (including without limitation, prior to the razing of the Existing Senior and Day Care Center), Developer will coordinate and implement the Relocation Plan (including without limitation, the payment of any costs related thereto, provided such costs are reimbursed to Developer in accordance with this Section 2.06 and the Development Budget), that was approved by Owner under the Interim Agreement and attached hereto as Exhibit E. The Parties recognize that the Relocation Plan is subject to Owner's approval under the Interim Agreement and is a condition precedent to the execution of this Agreement and that the Owner will be responsible to pay for the implementation of the Relocation Plan as a Project Cost under its Owner's Cost Allocation as set forth in the Development Budget, *provided however*, that any costs incurred by Developer related to the Relocation Plan are subject to the prior written approval of Owner, which approval will not be unreasonably withheld, conditioned or delayed so long as such cost is consistent with the amounts set forth for the Relocation Plan in the Development Budget. Developer agrees that any staffing requirements necessary to implement the Relocation Plan are not a part of Owner's Cost Allocation for the Relocation Plan in the Development Budget and will be paid by Developer out of its own funds. Developer will meet periodically with Owner to discuss any residence issues, daycare issues or other issues related to the Relocation Plan and any proposed changes to the Relocation Plan recommended by Developer (which will be subject to Owner's approval, provided such approval will not be unreasonably withheld, conditioned or delayed) and advise Owner if any such changes are impracticable in light of the other budget or scope constraints established under the Project Documents.

Section 2.07. Construction Phase. Developer shall:

- (a) provide administrative, management and related services to coordinate scheduled activities and responsibilities of subcontractors with each other and with those of Contractor, Major Subcontractors, any Other Contractor, and Lead Engineer to develop, manage and construct the Infrastructure Improvements in accordance with the Project Documents;
- (b) monitor the Work of all subcontractors with each other and with those of Contractor, Major Subcontractors, any Other Contractor and Lead Engineer in an effort to avoid or minimize undesirable or unintended duplication of effort and to facilitate compliance by all subcontractors, Contractor, any Other Contractor and Lead Engineer with their respective contracts;
- (c) promptly report to Owner any material noncompliance, of which Developer becomes aware, by any subcontractor, Contractor, any Other Contractor or Lead Engineer with their respective the Project Contracts or contracts and take appropriate measures to require such material noncompliance to be corrected;
- (d) promptly report to Owner any defect in the Infrastructure Improvements or any material default or material nonconformance with the Project Documents of which Developer becomes aware and take appropriate measures to require such defect, material default or material noncompliance to be corrected;

(e) establish a dispute resolution process to manage and resolve any disputes between any of Lead Engineer, Contractor, Major Subcontractors and Other Contractors related to the design, development and construction of the Infrastructure Improvements;

(f) coordinate with Contractor to develop and implement a safety program for the Property during construction for safety of workers, employees and visitors to the construction site;

(g) take such appropriate measures to require that the Work continues to be diligently prosecuted during the existence of any disputes between any of Lead Engineer, Contractor, Major Subcontractors or Other Contractors;

(h) monitor Lead Engineer and Contractor and establish a process to verify that the Infrastructure Improvements are constructed in accordance with the Site Plan and all applicable laws, rules, codes, proffers and regulations;

(i) assist Owner in responding to recognized neighborhood groups and local organizations rightfully interested in the Horizontal Project and the Senior Daycare and Residence Project;

(j) monitor and inspect the location of all utilities within or connected to the Infrastructure Improvements and enter into agreements with utility companies (or facilitate any discussions or agreements between utility companies and Contractor) for the Horizontal Project;

(k) oversee the accounting in connection with the Horizontal Project, including, without limitation, by the establishment and implementation of appropriate administrative and financial controls;

(l) inspect the progress of the course of construction of the Work, including verification of the materials and labor being furnished so as to be fully competent to approve or disapprove requests for payment made by Lead Engineer and Contractor, or by any other parties with respect to the Work;

(m) obtain and maintain (or enforce the obligation of Contractor under the GC Contract to obtain and maintain) insurance coverage in accordance with Article 7 of this Agreement;

(n) coordinate with Contractor and Lead Engineer to obtain or cause to be obtained all applicable Permits as and when required for construction of the Horizontal Project. Developer shall complete and present to Owner all proposed applications for Permits for Owner's signature and Owner shall promptly sign such applications (if permitted by applicable law, Developer may sign such applications on behalf of Owner if Owner so requests in writing). If Owner fails to execute any application or documentation requested by Developer for the Permits within fifteen (15) business days after receipt of such application, the Development Schedule, including any Milestone Dates or other deadlines or time periods, shall be extended one day for every day past the fifteen (15) business day period that Owner fails to execute such application or documentation; provided however, that if a dispute arises regarding any documentation that Owner is requested to execute by Developer because Owner does not believe the documentation

or contents thereof are reasonable or sufficient, the Parties shall resolve such dispute in accordance with Section 11.01 below; and, *provided further*, that if it is ultimately determined that Owner acted reasonably in refusing to execute such documentation, the Development Schedule, Milestone Dates or other deadlines or time periods will not be so extended. Developer or Developer's designee (e.g., rezoning attorney or engineers) shall attend all necessary meetings of regulatory bodies or other Governmental Authorities in connection with obtaining the Permits. Owner, at Developer's request, shall attend such meeting with Developer. Developer shall give Owner reasonable advance notice of the substance of the meeting in order that Owner may have an appropriate representative at such meetings. A representative for Owner shall attend the meetings of the Fairfax County Planning Commission and the Board of Supervisors of Fairfax County, Virginia, for the Development Approvals. In no event shall Developer agree to any dedication, cost, liability, condition or limitation with respect to the issuance of a Permit or other governmental approval or any payments or obligations (including concessions by, or restrictions on Owner or the Horizontal Project) in connection therewith except for a matter with respect to the Infrastructure Improvements that is consistent with the Project Documents, the Development Approvals and approved by Owner;

(o) notify Owner, within five (5) business days after Developer obtains knowledge or receives notice (whichever occurs first) of any filing of a mechanic's lien claim against the Property. Promptly thereafter, Developer shall use commercially reasonable efforts to cause the prompt removal of any such lien or take other such action as Developer reasonably determines to be necessary to protect the Property after consultation with Owner and Developer shall bear the costs for opposing the lien including any costs of litigation (i.e. attorney fees) and posting a bond to bond off any such lien;

(p) immediately notify Owner upon discovery by Developer of any Hazardous Substances on the Property which had not been previously identified as an environmental concern, and recommend appropriate action and supervise the course of action approved or directed by Owner. In connection therewith, Owner agrees to execute any contracts or directions for disposal as reasonably requested by Developer;

(q) (1) implement policies regarding the use of Hazardous Substances on the Property for the construction of the Infrastructure Improvements, (2) manage and oversee Contractor, Major Subcontractors and Other Contractors to the extent any Hazardous Substances are used on the Property for the construction of the Infrastructure Improvements, (3) immediately notify Owner upon discovery of any violation of an Environmental Law in the use of such Hazardous Substances, and (4) recommend appropriate action to be taken for such violation of an Environmental Law and supervise such action;

(r) coordinate and schedule with Contractor under the GC Contract for Substantial Completion to occur in a timely manner in compliance with the Development Schedule and the GC Contract;

(s) coordinate with Lead Engineer, Contractor and Consultants in order that the design, development and construction of the Infrastructure Improvements comply with the Project Documents, the Project Contracts and all applicable laws, rules, codes, regulations and obligations

in all material respects and, if necessary, take corrective action against Lead Engineer or Contractor if non-compliance is discovered;

(t) coordinate and schedule with Contractor under the GC Contract for the completion of any Punch-list Items following Substantial Completion to occur in a timely manner in compliance with the GC Contract;

(u) coordinate with Contractor and Lead Engineer and any of Owner's architects, engineers or contractors in the event that Owner commences any construction work for the Senior and Day Care Center prior to Final Completion of the Infrastructure Improvements; and

(v) perform and administer such other services reasonably required by Owner that are within the general scope of the services described herein.

Section 2.09. Milestones and Delays. The Milestones must be achieved or satisfied by the corresponding Milestone Dates, as set forth in Exhibit D attached hereto, as the same may be extended in accordance with this Agreement (including, without limitation, as a result of a Force Majeure Delay or the Tolling Period). Developer and Owner shall each take such measures as are necessary or appropriate to achieve the Milestones in a timely manner, in accordance with the terms of and subject to the limitations set forth in this Agreement. The Parties agree that any Milestone Date that has not yet occurred will be extended on a day-for-day basis for each day of delay directly resulting from Owner Change Order or failure to timely respond, as provided herein. In the event of a failure to achieve or satisfy a Milestone by its respective Milestone Date, Article 9 shall govern the rights and duties of the Parties.

Section 2.10. Notice of Deviations. Developer shall notify Owner in any report to be delivered pursuant to Section 2.14 below if (i) a projected increase in the costs of development or construction of the Infrastructure Improvements will increase the Owner's Cost Allocation in the Development Budget by more than five percent (5%) in any one line item; or (ii) an item on the Development Schedule will not be completed within thirty (30) days after the completion date therefor indicated on the Development Schedule; or (iii) a Milestone will not be achieved by the corresponding Milestone Date. Developer's notice shall include the circumstances giving rise to such deviation, and the anticipated impact thereof. Promptly thereafter, subject to Owner's approval when required under this Agreement (x) the Development Budget should be revised to reflect such adjustment, or (y) the Development Schedule should be revised to reflect such delay. In the event the Parties cannot agree on the matters that are the subject of the deviation or Owner does not approve an adjustment to the Development Budget or a revision to the Development Schedule, then such matters will be treated as a dispute and will be resolved in accordance with Section 11.01 below.

Section 2.11. Limitations on Authority of Developer. Notwithstanding anything to the contrary herein, Developer shall not, without the prior approval of Owner (which approval will not be unreasonably withheld, conditioned or delayed), take any of the following actions, unless such actions are permitted or allowed under the Ground Lease (and only to the extent such actions are permitted or allowed thereunder):

(a) subject all or any portion of the Infrastructure Improvements or any other property of Owner to any mortgage, deed of trust, lien or other encumbrance, or transfer all or any portion of the Infrastructure Improvements or the fee interest in the Property;

(b) take any action which would cause Owner to expend funds or incur liabilities or obligations to a third party with respect to any part of the Infrastructure Improvements or the Property except as expressly provided in or contemplated by the Development Budget or other Project Documents;

(c) take any action that would result in any activity or expenditure that is not consistent, in all material respects, with the Project Documents;

(d) borrow money or execute any promissory note, evidence of indebtedness, guaranty or the like in the name of or on behalf of Owner;

(e) commence litigation against or settle claims of Contractor, any Other Contractor, the Major Subcontractors, Lead Engineer, any other subcontractor, supplier, laborer or materialmen, or any other Person relating to the development and construction of the Infrastructure Improvements or otherwise related to the Horizontal Project, except to the extent that Developer believes is necessary to enforce, preserve or protect Owner's or Developer's rights, interests or obligations under this Agreement (and to the extent same involves the interests of Owner or any interest in the Property, only with the prior consent of Owner, which will not be unreasonably withheld, conditioned or delayed); or

(f) except as permitted elsewhere in this Agreement, modify, waive any right under or terminate any Project Contract(s) that require the approval of Owner pursuant to the terms of this Agreement.

Section 2.12. Reserved.

Section 2.13. Payment and Performance Bonds. Prior to Commencement of Construction of the Infrastructure Improvements, Developer shall obtain, or cause Contractor and Other Contractors to obtain, payment and performance bonds for Final Completion (or portion thereof being completed by any Other Contractor). The payment and performance bonds shall be in an amount sufficient to satisfy the County's then current bonding requirements for public infrastructure projects in the County. Payment and performance bonds for the Infrastructure Improvements shall be a Project Cost, *provided however*, that in the Development Budget, such costs of the payment and performance bonds for: (a) the Senior and Daycare Center Infrastructure Improvements shall be allocated to Owner; (b) the Senior Independent Living Residence Infrastructure Improvements shall be allocated to Developer; and (c) the Common Infrastructure shall be allocated among Owner and Developer in the proportion/amount set forth in the Development Budget (and subject to the Parties agreeing to pay all Project Costs on a percentage basis in accordance with Section 3.02 below). The payment and performance bonds with respect to the Infrastructure Improvements shall satisfy the County's then current bonding requirements for public infrastructure projects in the County (as determined by the County). Owner, along with Developer, shall be named as obligee or co-obligee on any such bonds. Developer shall deliver to Owner for its prior review and approval any and all applications, and

all supporting exhibits and documentation related thereto (collectively, the **Bond Application Package**) that Developer intends to submit to the County for the payment and performance bonds for the Horizontal Project. Owner shall review such Bond Application Package and notify Developer in writing of Owner's approval or disapproval of the same (provided that any notice of disapproval sent by Owner shall contain sufficient details and explanations for the reason of such disapproval and any requested changes to the Bond Application Package or any subsequent modifications thereto necessary to obtain Owner's approval) within fifteen (15) business days after its receipt of the same from Developer. If Owner fails to notify Developer in writing of either its approval or disapproval of the Bond Application Package, or any modifications thereto, within fifteen (15) business days after its receipt of the same from Developer, then the Bond Application Package or such modifications (as applicable) shall be deemed approved by Owner.

Section 2.14. Reports by Developer to Owner.

(a) Progress Reports. Developer shall prepare and deliver regular reports to Owner regarding the progress of the design, development, construction and schedule of the Horizontal Project and any and all deviations from the Project Documents, including cost savings and cost increases against the Development Budget, as applicable and any proposed changes to the Development Schedule which would extend that date by which any Milestone is to be achieved or by which Substantial Completion is to occur. The reports shall be prepared on a quarterly basis from the Agreement Date until Substantial Completion has occurred. Owner acknowledges that the reports will contain and be based upon information provided by third parties, such as Lead Engineer and Contractor. Developer's reports required under this Section shall include a monthly cash flow projection incorporating the projected costs to Owner which are obtained by Developer from all subcontractors, the Major Subcontractors, Contractor and Lead Engineer for their Work or services in connection with the design, development and construction of the Infrastructure. Developer shall schedule with Owner regular meetings (not less than monthly) to review and discuss such reports and any other issues related to the rezoning, development and construction of the Infrastructure that has occurred since the distribution of such reports.

(b) Access; Meetings. Owner shall have access, upon prior written notice to Developer and during reasonable business hours, to all information (including documents, reports, computer printouts and similar information) of Developer and its affiliates regarding the Horizontal Project and shall have the right to copy or otherwise re-produce all such materials. Designated representatives of Developer and Owner shall make themselves available upon reasonable prior written notice (by either party) and during reasonable business hours to consult by phone or email or at a mutually acceptable location with one another to discuss the Infrastructure Improvements, subject to reasonable scheduling.

Section 2.15. Term.

(a) Term. The term of this Agreement (the **Term**) shall be deemed to commence as of the Agreement Date, and, unless earlier terminated as provided herein, shall expire on the date that is three hundred seventy (370) days after Final Completion except the following matters shall survive such expiration: (i) to the extent any obligation of performance or repair set forth herein is covered by a warranty, this Agreement shall survive until the expiration

of such warranty to the extent necessary for Owner to enforce any rights it has with respect to such warranty and (ii) to the extent provided in Section 13.16.

(b) Outside Date; Extended Outside Date; Tolling Period. The Development Schedule provides that Developer will be awarded a reservation of the LIHTCs necessary for its Financing Plan on or before September 15, 2015 (the "Outside Date"). In the event Developer is not awarded such LIHTCs on or before the Outside Date, Developer shall have the one time right to re-apply for LIHTCs in calendar year 2016 and, in such event, this Agreement shall remain in full force and effect, except that all dates and time periods set forth in the Development Schedule shall toll until the earlier of (i) Developer is awarded a reservation of the LIHTCs necessary for Owner to approve its Financing Plan; or (ii) September 15, 2016 (such later date being, the "Extended Outside Date"). The period between the Outside Date and Extended Outside Date shall be referred to herein as the "Tolling Period". If Developer is awarded such LIHTCs on the Extended Outside Date, the Development Schedule, and all dates set forth therein, shall be reset on day-for-day basis as the Tolling Period. In the event Developer is not awarded the LIHTCs before the Extended Outside Date, Section 9.01 shall apply.

Section 2.16. Developer's Performance.

(a) Developer Covenants. Subject to the contribution of Owner's Cost Allocation under this Agreement and the payment of funds that Owner is required to provide pursuant to the terms of this Agreement (including without limitation, in Section 6.03 hereof) and to any other obligations hereunder that Owner is to perform, Developer covenants to (i) perform its obligations hereunder in accordance with industry standards, in a professional manner consistent with the orderly and expeditious design, development and construction of infrastructure improvements in the metropolitan Northern Virginia area and in accordance with the terms of the Project Documents, (ii) take all steps usually and customarily taken by prudent and experienced developers seeking with due diligence to achieve the objective to which their particular effort pertains, (iii) devote as much time and resources as is necessary to manage the design, development and construction of the Infrastructure Improvements in accordance with the requirements of the Project Documents, and (iv) act at all times in good faith and in the best interests of Owner and the Infrastructure Improvements, seeking to minimize Project Costs and achieve Final Completion by the Final Completion Date subject to the terms and conditions of this Agreement.

(b) Skill Level; Delivery of Approvals and Consents. Developer recognizes the necessity of a close working relationship with Owner and hereby covenants and agrees to furnish the level of skill, efforts and judgment in the performance of its duties and responsibilities under this Agreement which is appropriate and consistent with the coordination of the development of infrastructure improvements in the metropolitan Northern Virginia area and to provide Developer's knowledge, ideas, experience and abilities relating to the development of the Infrastructure Improvements. Developer and Owner hereby covenant and agree to render approvals, consents or decisions in a timely manner to requests submitted by the other party hereto; provided however, that the foregoing shall not be deemed to reduce or extend any time periods for any actions or responses otherwise set forth in this Agreement, unless otherwise expressly stated in this Agreement. Any delay in receipt of such decisions shall be taken into

account from time to time as the Development Schedule is modified in accordance with this Agreement.

Section 2.17. Indemnification.

(a) Breach. Developer shall indemnify, defend and hold harmless Owner from and against any liability, cost, damage, lien, loss or expense (including reasonable attorney's fees (including the reasonable value of any in-house attorneys) and disbursements) incurred or suffered by Owner as a result of Developer's failure to pay in a timely manner any cost or expense for which Developer has been timely paid or reimbursed as provided in this Agreement, including, without limitation any and all payments due subcontractors, Major Subcontractors, Contractor, any Other Contractor and Lead Engineer under their respective contracts.

(b) Negligence; Willful Misconduct. Developer shall indemnify, defend and hold harmless Owner (and its officers, supervisors and employees) from and against any and all liability, cost, damage, lien, loss or expense (including attorney's fees (including the reasonable value of any in-house attorneys) and disbursements) in any matter related to, arising out of or resulting from any negligence, fraud or willful misconduct of Developer or its officers or employees. The rights of Owner under this Section shall be limited to actual damages, which shall not include consequential or punitive damages.

Section 2.18. Copies of Notices Affecting the Infrastructure Improvements. During the Term, in the event Developer receives any service of process or any notice of (or similar document relating to) any action, omission, violation or circumstance which could have a material effect on the construction of the Infrastructure Improvements, then Developer shall deliver a copy of same to Owner as soon as practicable in the manner set forth in Section 13.01 below.

Section 2.19. Books and Records.

(a) Maintenance of Books and Records. Developer shall keep, or cause to be kept, accurate, full and complete books of account on a calendar year basis showing assets, liabilities, income, operations, transactions and the financial condition of Developer for the design and construction of the Horizontal Project.

(b) Place of Books and Records. The books, accounts and records of Developer for the Horizontal Project shall be at all times maintained at Developer's principal office and shall at all reasonable times and upon prior reasonable notice be accessible to Owner. Developer shall maintain the books and records for a period of three (3) years after expiration of the Term.

(c) Developer Records. During the Term, upon ten (10) days' notice to Developer delivered pursuant to Section 13.01 hereof, Owner may, at its option and at its own expense, conduct audits of the books, records and accounts of Developer related to the Infrastructure, but not more than two times per calendar year. Developer shall provide Owner's appraisers, accountants and advisors with access to all of its information related to the design, development and construction of the Infrastructure. Owner shall promptly reimburse Developer

for any costs, including costs it must expend for consultants (e.g. accountants) to accommodate such audits or inspections by or at the request of Owner under this Section 2.19.

(d) Lead Engineer and Contractor Records. Developer shall cause Lead Engineer and Contractor under their respective agreements to make their books and records with respect to the Infrastructure Improvements available to Owner for its review in a manner consistent with Section 2.19(c) above.

Section 2.20. Risk of Cost Overruns.

(a) In General. Developer is at risk for the payment of all overruns under the Development Budget which remain after any allowable line item re-allocations under Section 3.02, except as otherwise expressly provided to the contrary in this Agreement.

(b) Owner Change Orders. Notwithstanding Section 2.20(a), Owner Change Orders are not Project Costs or part of Owner's Cost Allocation and shall be paid for by Owner; and Developer will not be responsible for any cost overruns related thereto.

(c) Cost Overruns Related to Environmental or Soil Conditions. Notwithstanding Section 2.20(a), the Parties agree that overruns in any line items or categories in the Development Budget relating to environmental or soil conditions of the Property (excluding such conditions of which Developer had actual knowledge as of the date of this Agreement) shall be paid for by both Owner and Developer equally (i.e. each Party shall be responsible for fifty percent (50%) of such cost overruns).

(d) Project Contracts. Developer may collect any and all amounts that Developer is responsible for arising out of, related to or in connection with this Section 2.20 from third parties or Persons, other than Owner, including, without limitation, Lead Engineer, Contractor, Major Subcontractors or Consultants in accordance with such parties' Project Contracts or from one or more of such parties' insurance policies or carriers or from any surety or bonding companies; provided however, Developer's obligations under this Agreement are not contingent on collection from any of the foregoing parties.

Section 2.21. As Is, Where is, With all Faults; Limited Liability of Owner. Owner and Developer acknowledge and agree that Developer is being delivered the Property for the purposes of undertaking the obligations set forth in this Agreement with the understanding that the Property is in its "as is, where is, with all faults" condition and Owner is under no obligation to perform any duties with respect to the Property whatsoever, unless and except as otherwise expressly provided by this Agreement. Owner has delivered to Developer prior to the Agreement Date any environmental conditions reports prepared by or for Owner with respect to the Property that Owner has in its possession (collectively, the "Environmental Conditions Reports"), which are listed on Exhibit H, attached hereto and made a part hereof. Owner is under no obligation to perform any further remediation with respect to the Property, irrespective of whether any remediation was identified, quantified, mitigated, or otherwise recommended in the Environmental Conditions Reports (the "Pre-Existing Environmental Conditions"), if any. If, from and after the Agreement Date, any additional environmental conditions are discovered by Developer that impact the entire Property or any additional environmental conditions are

discovered by Developer that impact only a portion of the Property, each Owner and Developer shall have the right, in its sole and absolute discretion, to either (A) fund any necessary environmental remediation costs in accordance with Section 2.20(c) and proceed with the development of the Horizontal Project in accordance with the terms of this Agreement or (B) terminate this Agreement, in which case Owner shall, within fifteen (15) business days thereafter, pay to Developer an amount equal to the sum of the portion of Owner's Cost Allocation actually incurred by Developer in pursuit of the Development Approvals for the Horizontal Project and neither of the parties shall have any further liabilities or obligations hereunder, except those that expressly survive termination of this Agreement. Notwithstanding the foregoing, in the event that one Party elects, in its sole and absolute discretion, to remediate the Pre-Existing Environmental Conditions, the other Party may not terminate this Agreement and the period of remediation shall constitute a Force Majeure Delay (except with respect to such Force Majeure Delay, the condition of not more than ninety (90) days shall not apply) and the Development Schedule will be revised accordingly. The Party agreeing to remediate the Pre-Existing Environmental Conditions shall notify the other Party of its election to remediate within sixty (60) days of obtaining notice from Developer of the existence of the Pre-Existing Environmental Conditions. Developer shall have no right to obligate Owner to remediate any Pre-Existing Environmental Conditions under any Environmental Laws or other applicable laws and Developer's sole remedies with respect to any Pre-Existing Environmental Conditions are set forth in this Section.

Section 2.22. Risk of Loss. All risk of loss with respect to the Property or any portion thereof shall be borne by Owner, provided however, that upon execution of the Ground Lease, risk of loss of the leasehold interest in the portion of the Property conveyed by the Ground Lease (and all Infrastructure Improvements thereon, if any) shall pass to Developer (and the affiliate of Developer that is the tenant under the Ground Lease) for purposes of this Agreement.

ARTICLE 3. PROJECT DOCUMENTS

Section 3.01. Development Plan and Development Schedule.

(a) Development Plan. The development plan, attached hereto as Exhibit A (the **Development Plan**), may set forth (subject to Agreement by the Parties otherwise, as set forth in Section 3.02 below), *inter alia*, that development of the Infrastructure Improvements will be divided into three categories for purposes of responsibility for Project Costs and identified as: (i) the Common Infrastructure Improvements; (ii) the Senior and Daycare Center Infrastructure Improvements; or (iii) the Senior Independent Living Residence Infrastructure Improvements. If Developer determines that any modifications to the Development Plan are necessary after the Agreement Date, Developer shall notify Owner in writing of any such proposed modifications, and such proposed modifications shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, to the extent any proposed modifications to the Development Plan result in material increase Owner's Cost Allocation of Project Costs or would materially adversely affect the use of the Senior and Daycare Center Infrastructure Improvements, Owner may grant or withhold its consent in its sole and absolute discretion.

(b) Development Schedule. The schedule, attached hereto as Exhibit B (the **Development Schedule**), sets forth, *inter alia*, the date of Substantial Completion (subject to any extensions as provided in this Agreement) and the Final Completion Date (subject to any extensions as provided in this Agreement) of the Horizontal Project. If Developer determines that any modifications to the Development Schedule are necessary after the Agreement Date, Developer shall notify Owner in writing of any such proposed modifications, and such proposed modifications shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, to the extent any proposed modifications to the Development Schedule after the Agreement Date are: (i) necessitated by the occurrence of Force Majeure Delays, Owner shall approve such modifications to the extent that such modifications are reasonable in light of the circumstances giving rise to the necessity for such modifications; or (ii) the result of the Tolling Period having occurred (and Developer is awarded the LIHTCs which necessitated the Tolling Period, the Development Schedule shall be extended in accordance with Section 2.15(b).

(c) Approval Process. Following any submission by Developer to Owner of any proposed modifications to the Development Plan or the Development Schedule, Owner shall, subject to the terms set forth hereinabove in this Section, review each such submission and notify Developer in writing of Owner's approval or disapproval of such submission within fifteen (15) business days after its receipt of the same from Developer. If Owner disapproves any such submission, Owner's notice to Developer shall set forth in reasonable detail the reasons for such disapproval. If Owner fails to notify Developer in writing of either its approval or disapproval of any such submission within fifteen (15) business days after its receipt of the same from Developer, then such submission shall be deemed approved by Owner (but such deemed approval shall not extend to any agency, regulator or authority of Owner's right to review and approve any proposed modifications to the Development Plan or the Development Schedule in its governmental capacity, if applicable).

Section 3.02. Development Budget. The budget attached hereto as Exhibit C and made a part hereof (the **Preliminary Development Budget**) sets forth all of the estimated Project Costs, as of the Agreement Date. The Preliminary Development Budget sets forth the portion of the Project Costs applicable to each category, including: (i) the Project Costs to be paid for by Owner (or for which Developer shall be reimbursed by Owner) for (A) the Senior and Daycare Center Infrastructure Improvements, and (B) the portion of the Project Costs allocable to Owner's share of the Common Infrastructure Improvements ((i)(A) and (B) being hereinafter referred to as the **Owner's Cost Allocation**); and (ii) the Project Costs to be paid for by Developer for (A) the Senior Independent Living Residence Infrastructure Improvements, and (B) the portion of the Project Costs allocable to Developer's share of the Common Infrastructure Improvements ((ii)(A) and (B) being hereinafter referred to as the **Developer's Cost Allocation**). To the extent any line item of the Development Budget contains Project Costs which are to be split among the Parties, such line item shall contain the amount of Owner's Cost Allocation and Developer's Cost Allocation for such line item. Notwithstanding anything in this Section 3.02 to the contrary, due to the complications of determining which Infrastructure Improvements fall into specific categories of Senior and Daycare Center Infrastructure Improvements, Senior Independent Living Residence Infrastructure Improvements and Common Infrastructure Improvements, the Parties may agree to provide in the Preliminary Development Budget to split Owner's Cost Allocation and Developer's Cost Allocation for the entire

Horizontal Project (or any portion of the Horizontal Project) on a percentage basis for some or all of the Project Costs and in such event, the Owner's Cost Allocation and Developer's Cost Allocation will be such Parties percentage share thereof, and the Preliminary Development Budget will reflect each Parties share of the Project Costs accordingly. Upon Developer closing on the sale of the LIHTCs with an investor and a loan with any lender providing financing to Developer to construct any Infrastructure Improvements under this Agreement (or by the ground tenant per the terms of the Ground Lease), all as provided in the Financing Plan (or as otherwise agreed to in writing by the Parties), the Preliminary Development Budget shall thereafter be the **Development Budget**.

To the extent that Developer determines that any modifications to the Development Budget are necessary after the Agreement Date, Developer shall make such modifications to the Development Budget and submit the revised Development Budget to Owner for informational purposes. Notwithstanding the foregoing, any material modifications to the Development Budget shall require the approval of Owner. Modifications to the Development Budget shall be deemed "material" if such modifications would result in (1) a change in the quality and character of the Infrastructure Improvements from that contemplated by the Development Plan and Site Plan or (2) an increase of more than five percent (5%) in any line item of the Development Budget wherein an Owner's Cost Allocation exists or (3) an increase in the overall Owner's Cost Allocation for the Horizontal Project above Owner's Cost Cap. In the event that modifications to the Development Budget are not material, Developer may re-allocate savings from any line item which contains an Owner's Cost Allocation to overruns in another line item(s) which contain an Owner's Cost Allocation without having to obtain the approval of Owner. Owner's approval of any material modifications to the Development Budget of the type described in clauses (1) or (2) of this paragraph shall not be unreasonably withheld, conditioned or delayed; *however*, Owner may grant or withhold its approval of any material modifications to the Development Budget of the type described in clause (3) of this paragraph in its sole and absolute discretion. To the extent Owner's approval of any modifications to the Development Budget is required hereunder, Developer shall provide Owner with copies of any proposed modifications to the Development Budget for Owner's review and approval of the Development Budget and Owner shall review such modified Development Budget and notify Developer in writing of Owner's approval or disapproval of the same (provided that any notice of disapproval sent by Owner shall contain sufficient details and explanations for the reason of such disapproval and any requested changes to the Development Budget or any subsequent modifications thereto necessary to obtain Owner's approval) within fifteen (15) business days after its receipt of the same from Developer. If Owner fails to notify Developer in writing of either its approval or disapproval of the Development Budget, or any modifications thereto, within fifteen (15) business days after its receipt of the same from Developer, then the Development Budget or such modifications (as applicable) shall be deemed approved by Owner.

Section 3.03. Other Project Documents. The Parties hereto acknowledge and agree that, in order for the Day Care Centers and Senior Residence Project to be successful and to assist the Parties in the allocation of rights and responsibilities for certain portions of the Horizontal Project (and the Day Care Centers and Senior Residence Project), including, without limitation, establishing a final Development Budget, that the parties need to agree (by separate agreement) to, *inter alia*: (a) the allocation of rights and responsibilities (including costs) among the Parties related to the final proffer conditions which relate to the Horizontal Project (a

Proffer Allocation Agreement); and (b) reciprocal easements (or reservations of rights) between Owner and Developer or Developer's affiliate that is the tenant under the Ground Lease for easements related to ingress, egress, parking, utilities and similar matters related to the construction, maintenance and operation of the Horizontal Project (and the Day Care Centers and Senior Residence Project) (a Reciprocal Easement Agreement). The Parties agree to work together in good faith: (y) to complete and execute the Proffer Allocation Agreement as soon as reasonably possible (but in any event prior to finalizing the Development Budget and Commencement of Construction); and (z) to complete and execute (or cause the tenant under the Ground Lease to agree and execute) the Reciprocal Easement Agreement prior to Substantial Completion and execution of the Ground Lease.

ARTICLE 4. DEVELOPER FINANCING PLAN; REIMBURSEMENT

Section 4.01. Financing Plan. The Parties hereto acknowledge and agree that there are various potential funding sources for the Horizontal Project, including, without limitation, traditional bank financing, LIHTCS, bond financing and equity contributions from Developer (collectively, the Funding Sources). Developer's estimated Funding Sources as of the Agreement Date are set forth in Exhibit F, attached hereto and made a part hereof. Prior to Commencement of Construction, Developer shall provide Owner with a detailed financing plan for Developer's Cost Allocation and any and all other costs and expenses which may be necessary to achieve Final Completion that are included in the Project Costs and the Development Budget and identifying the Funding Sources to be utilized by Developer to provide construction and permanent financing (if contemplated) for the Horizontal Project, including, without limitation, the Owner's Cost Allocation (the Financing Plan). The Financing Plan shall be subject to the prior written approval of Owner, which approval shall not be unreasonably withheld, conditioned or delayed so long as: (i) the Owner's Cost Allocation does not exceed the Owner's Cost Cap; and (ii) Developer's Cost Allocation is not reduced from the Developer's Cost Allocation set forth in the Development Budget (unless such reduction is solely the result of a reduction in costs of materials or labor approved by Owner, and not a result of a reduction in the quantity or quality of materials or labor approved by Owner pursuant to the terms of this Agreement). The Financing Plan shall contemplate that Developer will be awarded LIHTCs from VHDA in a manner that is consistent with the amounts set forth in Exhibit F. To the extent that Developer determines that any other modifications to the Financing Plan for the Horizontal Project are necessary after such Financing Plan has been approved by Owner, Developer shall make such modifications to such Financing Plan and submit the revised Financing Plan to Owner for informational purposes. Notwithstanding the foregoing, in the event of any modifications to the Financing Plan that would either result in an increase in the Owner's Cost Allocation in the Development Budget above Owner's Cost Cap or result in a change in the quality and character of the Horizontal Project from that contemplated by the Development Approvals and the Development Plan, such modifications shall require the prior written approval of Owner, which approval Owner may grant or withhold in its sole and absolute discretion. In addition, in the event any modifications to the Financing Plan for the Horizontal Project require additional restrictions or encumbrances on the Property, Developer shall obtain Owner's prior written approval of such changes, which approval will not be unreasonably withheld, conditioned or delayed. Developer shall provide Owner with copies of any modifications to the Financing Plan and, to the extent Owner's approval of such modifications is required, Owner will review and approve in writing such modifications (or disapprove such modifications, provided Owner

sends with any notice of disapproval sufficient details and explanation for the reason of such disapproval and any requested changes to the modifications of such Financing Plan necessary to obtain Owner's approval) within fifteen (15) business days after receipt of the proposed modifications to such Financing Plan. If Owner fails to notify Developer in writing of either its approval or disapproval of the proposed modifications to such Financing Plan within fifteen (15) business days after its receipt of the same from Developer, then such proposed modifications to such Financing Plan shall be deemed approved by Owner. Owner shall send written notice to Developer within fifteen (15) business days after receipt of appropriations for the Horizontal Project or any portion thereof.

Section 4.02. Developer Reimbursement to Owner. In the event that Developer is awarded the LIHTCs that are necessary under the Financing Plan by the Extended Outside Date (or such longer period if Owner and Developer mutually decide not to terminate this Agreement if LIHTCs are not awarded by such date) , the Developer shall reimburse Owner for: (A) the One Hundred Thousand Dollars (\$100,000.00) paid by the County in connection with the preparation of the Site Plan under the Interim Agreement. Developer agrees to reimburse Owner as provided herein at the time of closing of the sale of the LIHTCs to an investor or partner purchaser (or in the event the Developer elects to retain the LIHTCs, prior to Commencement of Construction under this Agreement.

ARTICLE 5. GC CONTRACT; SELECTION CRITERIA

Section 5.01. GC Contract. Developer shall negotiate and enter into the GC Contract with Contractor selected in accordance with Sections 5.02 and 5.03 below. The GC Contract shall be based on the Work to be completed under the Project Documents (including any Work to comply with any proffer conditions which relate to the development of the Infrastructure Improvements), subject to the Owner's Cost Cap. The GC Contract shall be submitted for pricing and bidding (subject to terms of Section 5.02) upon Site Plan Approval unless otherwise agreed to by Owner and Developer.

Section 5.02. Selection of Contractor/Major Subcontractors. At the appropriate time, Developer shall produce a complete set of bidding documents to be submitted for bidding to, or negotiation with, proposed contractors and Major Subcontractors to construct the Infrastructure Improvements pursuant to the Project Documents (**“Bid Documents”**). The terms and conditions of the Bid Documents shall be proposed by Developer and mutually approved by Developer and Owner. Developer shall propose and Developer and Owner shall mutually approve the minimum qualifications for the proposed contractors and Major Subcontractors to bid and the selection criteria on which bids shall be reviewed (**“Selection Criteria”**). Developer and Owner shall mutually approve at least five (5) contractors (subject to the following paragraph) and at least five (5) subcontractors for each of the Major Subcontractors to be selected that will be solicited to bid in accordance with the Bid Documents. Developer shall undertake a sealed bid process (unless approved otherwise by Owner and Developer). Developer and Owner shall both be present at the unsealing of the bids. Based on the qualifications of the proposed contractors and Major Subcontractors, the satisfaction of and compliance with the terms and conditions of the Bid Documents and the satisfaction of the Selection Criteria, Developer and Owner shall mutually select and approve: (a) the contractor to be the **“Contractor”** with whom Developer shall execute the GC Contract (subject to the following paragraph); and

(b) the subcontractors to be the "Major Subcontractors with whom the Contractor or Developer shall enter into contracts to do the Work of the Major Subcontractors. In selecting and approving Contractor and Major Subcontractors, considerations shall include, *inter alia*, that all such parties have successfully worked in constructing other similar infrastructure projects and that each Contractor's and Major Subcontractors' bid has met the terms and conditions of the Bid Documents and Selection Criteria. In addition, Developer and Owner agree that the qualified bid providing the best value must be selected.

Notwithstanding anything set forth in this Section 5.02 to the contrary, the Parties acknowledge and agree that Hamel Builders, Inc., an affiliate of a member of Developer, is a proposed "Contractor" for the Horizontal Project and the Parties further agree that, provided that Hamel Builders, Inc. meets the terms and conditions of the Bid Documents and Selection Criteria and Owner otherwise approves the GC Contract (including the budget for the Work thereunder) in accordance with Section 5.03 below, the Parties agree that Developer does not need to bid the GC Contract in the manner set forth in the paragraph above.

Section 5.03. Required Provisions in GC Contract. Owner and Developer shall approve all the terms and conditions of the GC Contract (which should be in the form of a design, bid, build contract or other contract mutually agreed to by the Parties). Developer shall negotiate and enter into the GC Contract. The GC Contract shall contain, *inter alia*:

(a) a fee for the Contractor that does not exceed seven percent (7%) (inclusive of Contractor's overhead costs and profit) of the hard construction costs for the Work to be completed under the GC Contract. For purposes of clarification for this clause, "hard construction costs" does not include any bonds, cost certifications, contingencies, Virginia gross receipt taxes or other taxes or any escalations that may be included in any subtotal of hard costs that is contained in the Development Budget or in the GC Contract;

(b) a budget for the Work to be completed which clearly delineates (either by separate line item or by attaching separate budgets) those costs which are related solely to the Senior and Daycare Center Infrastructure Improvements and are the responsibility of Owner, those costs which are related solely to the Senior Independent Living Residence Infrastructure Improvements and are the responsibility of Developer and those costs relate to the Common Infrastructure; and

(c) General Conditions which have been approved by Owner, which approval Owner may grant or withhold in its sole and absolute discretion.

Section 5.04. Change Orders. Change orders shall occur in the manner set forth in the GC Contract.

ARTICLE 6. PAYMENT OF PROJECT COSTS; DEVELOPMENT FEE; EXPENSES

Section 6.01. Payment of Project Costs; Monthly Draw Requests.

(a) Payment of Project Costs. Owner and Developer shall pay Owner's Cost Allocation and Developer's Cost Allocation, respectively, for the Project Costs in accordance

with the Development Budget and Development Schedule. Owner's payment of Owner's Cost Allocation of the Project Costs are also governed by this Article 6.

(b) Monthly Draw Requests. Payments by Owner of the Owner's Cost Allocation for the Horizontal Project shall be requested by Developer in accordance with the procedures set forth in this Section 6.01(b). During the design, development and construction of any aspect of the Work intended by the parties to be funded in whole or in part with the Owner's Cost Allocation (the "Eligible Work"), on or prior to the tenth (10th) business day of each calendar month, Developer shall submit to Owner (i) a copy of a draw request in a form that is mutually and reasonably acceptable to Owner and Developer (provided the parties agree that any commercially reasonable draw request form required by any lender(s) providing financing for the construction and development of the Horizontal Project shall be an accepted form)(such request, the "Monthly Draw Request"); (ii) the certifications, if and as applicable and appropriate for the requested Monthly Draw Request, of Developer or the Contractor with respect to the Eligible Work (each a "Certification" and collectively, the "Certifications"), respectively, in commercially reasonable forms and as appropriate for each of such parties' role in completing the Eligible Work; (iii) for each other Major Subcontractor, Other Contractor, Consultant, subcontractor or materialman to be paid from the requested draw, an invoice from such party displaying the name, address and telephone number of such party, the amount owed to such party and, if applicable, the description of the Eligible Work performed by such party; (iv) when applicable during construction, unconditional lien releases executed by the Contractor and all Major Subcontractors, Other Contractors, Consultants, subcontractors, or materialmen as to amounts received by such parties pursuant to the immediately preceding Monthly Draw Request; (v) a report setting forth all costs, fees and expenses incurred during the previous calendar month and the total to date in connection with the performance of the Eligible Work, and a comparison of such costs, fees and expenses to the corresponding costs, fees and expenses permitted by the Development Budget for the Eligible Work (which may be provided by Developer in numerical presentation or spreadsheets and not in summary form); and (vi) a report describing the categories of Eligible Work completed as of such date, and a comparison of such completed categories of Eligible Work to the Eligible Work required to be completed under the Development Schedule. Owner may conduct an inspection of the portions of the Eligible Work completed to date on the Horizontal Project, the results of which shall be reasonably acceptable to Owner. Owner shall be entitled to request any additional information that is reasonably necessary for Owner's review and approval of all or some part of the amounts indicated in the Monthly Draw Request. Owner shall review each Monthly Draw Request within fifteen (15) business days after receipt thereof, together with the Certifications and the other materials set forth in this Section, including any other requested information, and within such fifteen (15) business day period shall either (a) approve the Monthly Draw Request in whole or in part, and remit the amounts approved by Owner to Developer or to the parties indicated in such Monthly Draw Request; or (b) reasonably disapprove the Monthly Draw Request in whole or in part, due to incomplete or inaccurate information or failure by Developer to submit the necessary information required under this Section and with such disapproval detail specifying the incomplete or inaccurate information or necessary information required under this Section that Developer failed to submit. Upon cure to the reasonable satisfaction of Owner by Developer of the cause of any disapproval, Developer may include the previously disapproved amount in the next Monthly Draw Request, and Owner shall fund such amount in accordance with this Section.

Notwithstanding anything contained in this Section to the contrary, payment of any Monthly Draw Request is subject to Owner's right to Retainage as set forth in Section 6.02. below.

Section 6.02. Retainage. Owner shall withhold from each payment of a Monthly Draw Request for Owner's Cost Allocation an amount equal to ten percent (10%) of such payment (the "Retainage")¹. The Retainage shall be held by Owner during the development and construction of the Horizontal Project and shall either be paid to Developer or returned to Owner in accordance with the terms of this Agreement. Following Substantial Completion, fifty percent (50%) of the Retainage shall be fully earned and shall be paid to Developer. In addition to the Certificate of Completion required to be delivered to Owner certifying Substantial Completion, prior to the release of the Retainage set forth in the preceding sentence, Developer shall deliver to Owner: (a) a consent of surety; (b) warranty bonds for Final Completion; (c) as-built drawings of the Infrastructure Improvements; and (d) any operations and maintenance manuals prepared by the manufacturer or contractor constructing or installing the Infrastructure Improvements. The remaining Retainage shall be paid proportionately (on a percentage basis) as the bonds posted with Fairfax County Land Development Services (or similar County agency) for the Infrastructure Improvements (the amount of which will be determined as of the date Final Completion occurs) is reduced or released.

Section 6.03. Development Fee. In consideration hereof and as compensation for Developer's services in connection with the development of the Senior and Daycare Center Infrastructure Improvements and Owner's share of the Common Infrastructure Improvements within the Horizontal Project, Owner shall pay to Developer a fee (the "Development Fee") in an amount equal to five and 50/100 percent (5.5%) (which includes all costs of Developer, including without limitation, overhead and staff for the Horizontal Project) of: (i) Owner's Cost Allocation set forth in the Development Budget (minus any line items for profit, overhead, bonds, permit fees, or taxes of any nature), plus (ii) Owner Change Orders (provided the Development Fee on Owner Change Orders shall not be counted twice if otherwise counted under the GC Contract). The Development Fee shall be payable as part of the Monthly Draw Request to Developer on a percentage completion basis in accordance with the Project Documents. Payment of the Development Fee shall occur on a monthly basis, commencing in the month immediately following the month in which construction commences and payable for the percentage completed as of the last day of the immediately preceding month, in accordance Development Schedule. The Development Fee is a Project Cost and will also be subject to the Retainage. Notwithstanding the foregoing, in no event shall the Development Fee payable pursuant to this Section be payable to Developer during any period of time that there exists a suspension in the construction of the Horizontal Project.

Section 6.04. Date Due; Interest. Unless otherwise provided herein, any amount due to Developer hereunder shall be paid by Owner within thirty (30) days of demand or request therefor. If Owner does not timely pay any such amount, then interest at the Interest Rate shall accrue on the amount due from the thirty-first day after the due date until the date payment is received by Developer.

¹ The Development Budget may identify Project Costs or line items that are not subject to withholding of Retainage.

Section 6.05. Project Savings.

(a) Savings Under GC Contract and other Project Contracts. If, upon Final Completion, the amounts payable to Contractor under the GC Contract is less than the guaranteed maximum price thereunder (as adjusted for Owner Change Orders), then the savings remaining shall be considered the "Project Savings." Project Savings shall be calculated after Final Completion.

(b) Sharing of Project Savings. Project Savings shall be shared by the parties as follows: (i) thirty-three and 33/100 percent (33.33%) being retained by Contractor, pursuant to the terms of the GC Contract; (ii) thirty-three and 33/100 percent (33.33%) being retained by Developer; and (iii) thirty-three and 34/100 percent (33.34%) being retained by Owner.

Section 6.06. Liquidated Damages.

(a) In the event the GC Contract or the other Project Contracts provide for liquidated damages, the GC Contract or respective Project Contracts shall expressly delineate the liquidated damages relative to Owner and the liquidated damages relative to Developer. If there is a dispute about whether the liquidated damages should be paid to Owner or Developer, then the dispute will be resolved in accordance with Section 11.01 below.

(b) In the event that Developer receives any such liquidated damages under the terms of the GC Contract or the other Project Contracts, Developer shall hold the same in trust for Owner and deliver same to Owner promptly after receipt thereof.

ARTICLE 7. GENERAL INSURANCE REQUIREMENTS.

Section 7.01. Policy and Certificate Requirements. All insurance provided by either Owner or Developer (or which Developer is to cause Contractor and Other Contractors to provide) pursuant to this Agreement shall be written by insurance companies of recognized responsibility, rated A/VII or better with AM Best licensed to do business in the Commonwealth of Virginia. Further, all such insurance shall be maintained in effect throughout the Term and shall be written with companies and on policy terms and conditions, including deductibles and limits, approved by Owner and Developer, which approval will not be unreasonably withheld, conditioned or delayed. The cost of insurance (other than Owner's insurance) required by this Agreement will be a Project Cost that is shared by Owner and Developer, as set forth in the Development Budget. All deductibles shall be the sole and exclusive responsibility of the party obligated to maintain the insurance hereunder. Each policy shall provide that the party not obligated to maintain the insurance and any affiliate of such party involved in any aspect of the Infrastructure Improvements shall be named as an additional insured on such policies. Further, each policy shall provide that it shall not be canceled, amended or reduced without thirty (30) days prior written notice to both Parties (ten (10) days in a case of non-payment of premium) and it shall not be invalidated or reduced by any act of either Party or any other Person having an interest in the Property or by foreclosure or other change in title to the Property. Owner and Developer shall deliver, on or before the date that is five (5) business days after the Agreement Date and within thirty (30) days prior to the expiration of any policy already in effect, certificates of insurance evidencing the coverage such party is required to insure. The other party may

request a certified copy of each such policy, in which case the appropriate party shall provide such a certified copy within a reasonable period of time after such request.

Section 7.02. Adjustment of Claims. In the event of any loss or claim under a policy of insurance maintained by or on behalf of Owner with respect to the Property, Developer shall provide Owner with notice of the same promptly after Developer knows of such loss or claim and shall fully cooperate with Owner and comply with the conditions and terms of such insurance policies to the end that payment may be obtained for any covered loss; provided however, that nothing herein shall authorize Developer to compromise or settle any loss or claim under a policy of insurance maintained by or on behalf of Owner without Owner's prior approval.

Section 7.03. Waiver of Subrogation. Notwithstanding anything to the contrary herein, to the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, each of Owner and Developer hereto releases and waives all claims, rights of recovery, and causes of action that such party or any party claiming by, through, or under such party by subrogation or otherwise may now or hereafter have against the other party (and the other's members, partners, agents, officers, directors and employees) for any loss or damage, including negligence, with respect to the insurance such party is required to carry hereunder, to the extent of the proceeds realized from such insurance coverage that are applied to such claim.

Section 7.04. Insurance Coverages.

(a) Coverage Requirements. Developer shall use commercially reasonable efforts to cause Contractor, Other Contractors, Lead Engineer and any other contractors or subcontractors to obtain and maintain in full force and effect all insurance required by and otherwise to comply with the terms of their respective contracts, including compliance with the requirements to provide evidence of insurance required under their respective contracts.

(b) Developer Coverage. At a minimum, Developer shall maintain or cause to be maintained throughout the Term, the following insurance:

(i) workers compensation insurance in an amount not less than as required by law in the Commonwealth of Virginia;

(ii) employer liability insurance (if applicable to Developer at the Property) in an amount not less than the amount maintained by prudent owners of properties in Fairfax County, Virginia comparable to the Property;

(iii) a complete value "all risk" builders risk insurance on the Property and other improvements on the Property under construction in an amount equal to the replacement value thereof;

(iv) errors and omissions insurance policies for the Lead Engineer and any other architects, engineers and other professionals engaged by or on behalf of Developer in connection with the construction or reconstruction in an amount not less than Two Million Dollars (\$2,000,000) per occurrence;

(v) business automobile liability which shall have minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability. This shall be an "any-auto" type of policy including owned, hired, non-owned and employee non-ownership coverage; and

(vi) At all times during the Term, at its own cost and expense, Developer shall provide, or cause to be provided, and keep in force, or cause to be kept in force, commercial general liability insurance in standard form, protecting Developer and Owner, and naming Owner as an additional insured, against personal injury, including without limitation, bodily injury, death or property damage on an occurrence basis if available and if not, then on a claims made basis, in either case in an amount not less than Ten Million Dollars (\$10,000,000) per occurrence or such other amount (lesser or greater) as recommended by the insurance consultant engaged by Developer.

All required policies, other than professional liability, shall provide that insurers have waived rights of subrogation against Owner.

(c) Owner Coverage. Owner shall maintain throughout the Term, at its sole cost, such commercial general liability insurance against claims for bodily injury, death or property damage occurring upon, in or about the Property and other such general insurance with such limits as are commercially reasonable and then customary for comparable properties in the Commonwealth of Virginia. The Parties agree that the Owner may elect to self-insure hereunder.

ARTICLE 8. ASSIGNMENT

Section 8.01. Assignment. Without the prior written consent of Owner, in its sole discretion, Developer may not assign its duties under this Agreement. Notwithstanding the foregoing, it is the express intent of the Parties that Developer may engage consultants, engineers and other professionals during the course of the performance of Developer's obligations hereunder and that the designation of certain obligations or responsibilities to such Persons retained directly by Developer to assist in the performance of Developer's obligations hereunder are not considered assignments under this Section for which Owner's consent is required (unless this Agreement expressly states otherwise).

ARTICLE 9. CAUSE; REMEDIES; RETAINAGE

Section 9.01. Cause. As used in this Agreement, the term "Cause" shall mean:

(a) a Milestone is not achieved by a Milestone Date (subject to Owner Change Orders, Force Majeure Delays and the Tolling Period); or

(b) Developer is not awarded the LIHTCs necessary under the Financing Plan approved by Owner by the Extended Outside Date;

(c) termination of the Ground Lease in accordance with its terms; or

(d) Developer assigns, directly or indirectly, whether voluntarily, involuntarily or by operation of law, any of its rights or obligations under this Agreement without the prior consent of Owner in violation of Section 8.01; or

(e) Developer or any of its members commence any voluntary case in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended; or

(f) any petition in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against Developer or any of its members seeking reorganization, liquidation or appointment of a receiver, trustee or liquidator for all or substantially all of the assets of Developer (or such member) and such petition has not been dismissed within ninety (90) days after the filing thereof; or

(g) fraud, a material theft or embezzlement by Developer or its employees or agents; *provided however*, that with respect to fraud, material theft or embezzlement by an employee or agent that is not a principal of Developer (or one of its members) of which Developer was unaware, such fraud, material theft or embezzlement is not cured within thirty (30) days after discovery by Developer; or

(h) gross negligence or willful misconduct perpetrated by Developer against Owner in connection with construction and development of the Horizontal Project; *provided however*, that with respect to gross negligence or willful misconduct by an employee or agent that is not a principal of Developer (or one of its members) of which Developer was unaware, the same is not cured within thirty (30) days after discovery by Developer; or

(i) criminal misappropriation of funds by Developer from the construction and development of the Horizontal Project; or

(j) Developer's act, event or omission constituting a failure to comply with its obligations under this Agreement, which failure continues for a period of thirty (30) days after written notice by Owner to Developer of such failure (or such longer period if compliance is not reasonably possible within thirty (30) days, so long as Developer is diligently pursuing a cure of such failure; provided however, that such period shall in no event exceed ninety (90) days); or

(k) a breach of Developer's representations and warranties set forth in Section 12.01 below.

Section 9.02. Termination by Owner for Cause. Upon the occurrence of an act, event or omission which constitutes Cause (after the lapse and expiration of any applicable notice and cure periods), Owner shall have the right to terminate this Agreement. In the event Owner elects to terminate this Agreement, it shall deliver a Termination Notice to Developer. Upon such termination, Owner shall pay to Developer for all rights and obligations accrued by Developer as of the date of termination, including, without limitation, the payment to Developer of any and all Development Fees and Project Costs provided for in this Agreement which are payable for the period up to the date of such termination (including amounts payable but for the

submission by Developer of an invoice complying with the requirements of this Agreement), and the Retainage shall be forfeited by Developer and retained by Owner.

Section 9.03. Other Remedies of Owner for Cause.

(a) Owner's Right to Cure; Damages. If Cause occurs under Section 9.01(a) or Section 9.01(j) (beyond applicable notice and cure periods, if any), in addition to the rights of Owner under Section 9.02, Owner may send written notice of such Cause to Developer (a **Default Notice**). The Default Notice shall contain information regarding the specified act, failure to act, condition or event that has constituted Cause. At any time after delivery of a Default Notice, but prior to Developer curing such Cause, Owner shall have the right, but not the obligation to take any and all reasonable measures (including without limitation, taking any and all measures necessary to achieve the Milestone that was not achieved by its respective Milestone Date) to cure such act, failure to act, condition or event that constitutes Cause and charge the Developer for all costs, expenses and fees incurred by Owner in connection with such cure, together with interest accruing thereon at the Interest Rate.

(b) Guaranty. At any time after Cause exists, whether or not Owner has elected to terminate this Agreement, Owner may exercise any of its rights against a Guarantor under the Guaranty.

(c) Failure to Achieve Final Completion by the Final Completion Date Milestone; Retainage. In the event Final Completion is not achieved by the Final Completion Date as a direct result of Developer's breach of this Agreement beyond any notice or cure period, Owner shall retain the Retainage, as liquidated damages and not as a penalty (it being agreed that Owner's damages are difficult if not impossible to ascertain). The Retainage shall be in addition to any liquidated damages that Owner is entitled to under the GC Contract.

(d) No Consequential or Punitive Damages. The rights of Owner and Developer under this Article 9 shall be limited to actual damages, which shall not include consequential or punitive damages and each Owner and Developer hereby waives any right to collect consequential or punitive damages under this Agreement.

(e) Remedies Cumulative; No Waivers. Each Party's rights and remedies set forth in this Article 9 are cumulative and in addition to such Party's other rights and remedies in this Agreement and available at law or in equity. The Parties exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. A Party's delay or failure to exercise or enforce any of its rights or remedies shall not constitute a waiver of any such rights or remedies. A Party will not be deemed to have waived any Cause or right or remedy hereunder unless such waiver expressly is set forth in an instrument signed by the waiving Party. If a Party waives in writing any Cause, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver.

Section 9.04. Owner Default. Developer shall have the right to terminate this Agreement under Section 9.05 upon the occurrence of any of the following events:

(a) Owner commences any voluntary case in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended; or

(b) any petition in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against Owner seeking reorganization, liquidation or appointment of a receiver, trustee or liquidator for all or substantially all of the assets of Owner and such petition has not been dismissed within ninety (90) calendar days after the filing thereof; or

(c) the failure of Owner to materially comply with any of its other obligations under this Agreement, which failure continues for a period of thirty (30) days after written notice by Developer to Owner of such failure (or, for non-monetary defaults only, such longer period if compliance is not reasonably possible within thirty (30) calendar days, so long as Owner is diligently pursuing a cure of such failure; provided however, that such period shall in no event exceed ninety (90) days).

Section 9.05. Remedies of Developer For Default. Upon the occurrence of an event in Section 9.04 (and after any applicable notice and cure periods have expired), Developer may either (1) terminate this Agreement in which event Owner shall pay any Project Costs incurred for the period up to the date of such termination (including amounts payable but for the submission by Developer of an invoice complying with the requirements of this Agreement), pay Developer its Development Fee, or (2) exercise the remedies available to Developer at law, in equity or by statute. In the event Developer elects to terminate this Agreement, it shall deliver a Termination Notice to Owner.

Section 9.06. Delivery of Records; Other Actions Subsequent to Termination. Upon termination of this Agreement and payment by Owner to Developer of all monies due as a result of such termination, if any, Developer shall promptly deliver to Owner all Project Documents, Project Contracts, contracts, memoranda, accounting and other books and records, warranties, plans and other documents relating to the Horizontal Project then in Developer's possession. In addition, Developer shall promptly account for any monies under this Agreement. Developer shall also furnish such information, take all such other action (at no cost, expense or liability to Developer) and shall cooperate with Owner, as Owner shall reasonably require in order to effectuate an orderly and systematic termination of Developer's duties and activities hereunder.

ARTICLE 10. GUARANTY

Section 10.01. Guaranty. As a material inducement to Owner entering into this Agreement, Developer agrees to deliver to Owner, concurrently with the execution of this Agreement, a joint and several guaranty (the "Guaranty") of completion for payment and performance of all of Developer's obligations under this Agreement executed by each member (or related affiliate thereof) of Developer (collectively, the "Guarantors"). Developer shall provide Owner with such financial and other information reasonably requested by Owner for the proposed Guarantors. Owner will approve or disapprove such Guarantors, in its sole, but reasonable discretion. Developer agrees to provide to Owner updated financial information reasonably requested by Owner (including, without limitation, financial statements which

include the net worth, assets, liabilities (including any contingent liabilities) of such Guarantor) on a quarterly basis in order to establish that such Guarantors are in compliance with the Guaranty and have the financial capability of paying and performing for all of Developer's obligations under this Agreement. The form of the Guaranty executed by the Guarantors shall be in substantially the same form set forth in Exhibit G attached hereto and made a part hereof.

ARTICLE 11. DISPUTE RESOLUTION

Section 11.01. Dispute Resolution. In the event of a dispute between Owner and Developer regarding any matters arising under this Agreement, Owner and Developer each covenant and agree to engage in good faith negotiations with the other in an attempt to promptly resolve such dispute. Except as otherwise specifically provided in this Agreement or as otherwise mutually agreed in writing by Developer and Owner, any dispute between the parties arising from or in connection with this Agreement shall be resolved by judicial proceedings.

ARTICLE 12. REPRESENTATIONS AND WARRANTIES

Section 12.01. Representations and Warranties of Developer. Developer hereby makes the following representations and warranties to Owner, each of which is true and correct as of the Agreement Date:

(a) Organization; Good Standing. Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the Commonwealth of Virginia, is qualified to do business in the Commonwealth of Virginia, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.

(b) Authorization; Enforceability. Developer has taken all requisite action to enter into and deliver this Agreement and all requisite action to execute and deliver each and every document required to be executed and delivered by Developer under this Agreement. All terms of this Agreement are binding on Developer and are enforceable in accordance with their terms (except as such terms may be limited by (a) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally; (b) general principles of equity, whether considered in a proceeding in equity or at law; or (c) other provisions of this Agreement; and do not and will not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Developer, or any other document, instrument, agreement, stipulation, judgment or order to which Developer is a party or by which Developer is bound.

(c) No Bankruptcy. Neither Developer nor any of its members have not filed any proceedings under the United States Bankruptcy Code or any other similar federal or state law or statute regarding relief from creditors' claims, and Developer has not received any actual notice of any such proceedings having been instituted or threatened by any party against it.

(d) No Litigation. There are no legal actions pending (or to the best of Developer's actual knowledge, threatened) against Developer nor any of its members, officers or directors, nor any affiliates of Developer, which would materially impair Developer's ability to perform its obligations in accordance with this Agreement.

(e) No Suspensions/Debarment. Neither Developer nor any of its members, officers or directors, nor, to the actual knowledge of Developer, any affiliates of Developer have ever been debarred or suspended by any department or agency of the federal government or of any state government from doing business with such department or agency.

(f) No Convictions. Neither Developer nor any of its members, officers or directors has ever been convicted of commission of a felony or is presently the subject of a complaint or indictment charging commission of a felony.

(g) Delivery of Developer's Organizational Documents; No Agreements Related to Horizontal Project with Affiliates. Developer has delivered a copy of Developer's limited liability company agreement, articles of organization, and any other agreements between the members of Developer or any affiliates of any member (including without limitation, the Contractor) directly or indirectly related to the Horizontal Project to Owner for Owner's review. During the Term, Developer, represents, warrants and covenants that it shall not enter into any agreements, contracts, or binding documents with any member (or affiliate of any member) of Developer that directly or indirectly relate to the Horizontal Project, except on terms and conditions of engagement that are reasonable, competitive and customary in the applicable marketplace; and *provided further*, a copy has been sent to Owner for Owner's approval (or such portion of the agreement, contract or document as it relates to the Horizontal Project), which approval shall not be unreasonably withheld, conditioned or delayed.

Section 12.02. Representations and Warranties of Owner. Owner hereby makes the following representations and warranties to Developer, each of which is true and correct as of the Agreement Date:

(a) Organization. Owner is a duly formed and validly existing political subdivision of the Commonwealth of Virginia, and has the requisite power and authority to enter into this Agreement, and generally to consummate the transactions contemplated by the terms of this Agreement.

(b) Authorization; Enforceability. Owner has taken all requisite action to fully authorize Owner to execute and deliver each and every document required to be executed and delivered by Owner under this Agreement. All terms of this Agreement are binding on Owner and are enforceable in accordance with their terms (except as such terms may be limited by (1) any applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or similar law affecting creditors' rights generally or (2) general principles of equity, whether considered in a proceeding in equity or at law) and do not and will not result in a breach of the terms and conditions of, or constitute a default under or violate the organizational documents of Owner, or any other document, instrument, agreement, stipulation, judgment or order to which Owner is a party or by which Owner is bound.

ARTICLE 13. MISCELLANEOUS

Section 13.01. Notices. All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be in writing, signed by the party giving the same, and shall be deemed properly given if sent by express courier service,

personal delivery, or by registered or certified United States mail, return receipt requested, postage prepaid and addressed to the Parties at their respective addresses set forth below, or to such other addresses as the Parties may from time to time designate in writing in the manner set forth above.

If to Developer, to it in care of:

c/o Wesley Housing Development Corporation
Attention: CEO/President
5515 Cherokee Avenue, Suite 200
Alexandria, Virginia 22312

With copies to:

Hamel Builders, Inc.
Attention: Philip W. Gibbs, President
5710-H Furnace Avenue
Elkridge, MD 21075

-and-

Klein Hornig LLP
Attention: Erik Hoffman, Esq.
1275 K Street NW
Suite 1200
Washington, DC 20005

If to Owner, to:

Board of Supervisors of Fairfax County
Attention: County Executive
12000 Government Center Parkway
Fairfax, Virginia 22035-0064
Fax: 703-324-3956

With a copies to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035-0064
Fax: (703) 324-2665

-and-

Oldaker Law Group, LLP
Attention: Jeffrey A. Mitchell, Esq.

818 Connecticut Avenue N.W.
Suite 1100
Washington, D.C. 20006
Fax: (202) 464-0669

Any party hereto may change the address to which notice may be delivered hereunder by the giving of written notice thereof to the other party as provided in this Section.

Section 13.02. No Personal Contracts. Without Owner's prior written approval, which may be withheld in Owner's reasonable discretion, prior to Final Completion, Developer shall not permit any of Contractor or Other Contractor to perform work on, or provide services to, the personal residence of any principal or employee of Developer or its Affiliates; provided the foregoing shall not prohibit Contractor or Other Contractor from performing such Work pursuant to any contract entered into on or prior to the date hereof.

Section 13.03. Force Majeure Delays means delays in any party's performance of its obligations hereunder due to acts of God or of a public enemy; acts of terrorism; unusual or extraordinary governmental delays beyond those typically anticipated for any approval or permitting process (and in such event, only such unusual or extraordinary additional time shall constitute Force Majeure Delays), provided that in each case the responsible party proceeds with all reasonable due diligence to afford the government the opportunity to process approvals and permits in a timely and efficient manner; freight embargoes; inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (other than due to price) despite reasonable diligence; unusually severe weather; archeological finds on the Property or any portion thereof; unforeseen soil or environmental conditions on the Property or any portion thereof; governmental restriction; moratoria; enemy action; civil commotion; casualty; condemnation; sabotage; or events similar or related to the above which are not within the reasonable control of the party asserting a delay or inability to perform (other than the failure to perform of a third party with whom the party seeking the benefits of this provision has contracted). Except as may otherwise be provided in this Section, no party to this Agreement shall be considered in breach of or default in any obligation under this Agreement in the event of Force Majeure Delays, provided however, the party claiming Force Majeure Delays shall use all reasonable and diligent efforts to minimize the delay or perform the obligation being hindered by such Force Majeure Delays or will not be permitted to invoke Force Majeure Delays as an excuse for delay to the extent such party fails to use such reasonable or diligent efforts. Force Majeure Delays shall not include situations caused by the gross negligence or willful misconduct of a party. Upon the termination of any Force Majeure Delays, the parties hereto agree that, upon the request of either party, they shall enter into a memorandum agreement showing the effect of the Force Majeure Delays upon the Development Schedule. In no event may any party to this Agreement claim Force Majeure Delays, in the aggregate, of ninety (90) days with respect to the Horizontal Project. Notwithstanding the preceding sentence, Owner and Developer agree that no delay occurring during the Tolling Period (if any) may constitute a Force Majeure Delays.

Section 13.04. Final Agreement. This Agreement and its Exhibits embody the final agreement between the parties, and to the extent that this Agreement and its Exhibits conflict or are inconsistent with prior agreements between the parties regarding the Horizontal Project, including, without limitation the Interim Agreement, this Agreement (subject to Section 2.03(c)

above) and its Exhibits supersede and control over all such prior agreements. This Agreement cannot be varied or terminated except as provided herein or by written agreement of the parties hereto.

Section 13.05. Additional Documents and Acts. In connection with this Agreement, as well as all transactions contemplated by this Agreement, each of Owner and Developer agrees to execute and deliver such additional documents and instruments, and to perform such additional acts as may be necessary or appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement, and all such transactions.

Section 13.06. Governing Law; Jurisdiction. This Agreement shall be construed, both as to its validity and as to the performance of the Parties, in accordance with the laws of the Commonwealth of Virginia applicable to contracts made and to be performed entirely within such state, except as otherwise set forth herein. Any legal actions under this Agreement must be instituted in the Circuit Court of the County and any other appropriate court in the County or, if appropriate, in the United States District Court for the Eastern District of Virginia.

Section 13.07. Pronouns. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

Section 13.08. References to this Agreement. Numbered or lettered Articles and Sections herein contained refer to Articles and Sections of this Agreement unless otherwise expressly stated.

Section 13.09. Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

Section 13.10. Binding Effect. Except as herein otherwise expressly stipulated to the contrary, this Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, legal representatives, successors and permitted assigns.

Section 13.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same Agreement.

Section 13.12. Amendments. This Agreement may not be amended, altered or modified except by a written instrument signed by each of Owner and Developer.

Section 13.13. Exhibits. All Exhibits attached hereto are made a part hereof by this reference.

Section 13.14. Severability. Every provision of this Agreement is hereby declared to be independent of, and separable from, every other provision of this Agreement. If any such provisions shall be held to be invalid or unenforceable, that holding shall be without effect upon the validity or enforceability of any other provision of this Agreement. It is the intention of the Parties that in lieu of each provision of this Agreement which is determined to be invalid or

unenforceable, there shall be added, as part of this Agreement, such an alternative Section or provision as may be valid or enforceable but otherwise as close to the applicable original provision as possible.

Section 13.15. Third-Party Beneficiaries. Except as expressly provided in this Agreement otherwise, this Agreement is made solely and specifically between and for the benefit of the Parties, and their respective successors and assigns subject to the express provisions hereof relating to successors and assigns, and no other person or party shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise.

Section 13.16. Survival. The following sections or matters shall survive expiration of the Term: (a) assignment of warranty claims to Owner by Developer under the GC Contract to the extent not previously assigned, (b) payment obligations of Owner to Developer or its affiliate under this Agreement including payments of any Developer Fees, Project Costs, Reimbursables or Retainage, (c) the Punch-list Items (except if this Agreement is terminated prior to Final Completion), (d) Section 2.15(a), Section 2.17, Section 2.19, Section 6.02, Section 6.05, Section 9.03, Section 9.05, and Section 10.01, and (f) any bond release work that is Developer's responsibility (except for repairs caused by or arising out of Owner's use of the Infrastructure Improvements which shall be Owner's responsibility).

Section 13.17. Days. Unless otherwise stated, a day shall be deemed to mean a calendar day.

Section 13.18. Time of Essence. Time is the essence of each and every provision of this Agreement.

Section 13.19. Non-Discrimination. Owner does not discriminate against faith-based organizations, in accordance with the Code of Virginia, § 2.2-4343.1, or against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment in the performance of its procurement activity. During the performance of this Agreement, Developer agrees as follows:

(a) Developer shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Developer. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

(b) Developer, in all solicitations or advertisements for employees placed by or on behalf of Developer in connection with the Infrastructure, shall state that Developer is an equal opportunity employer.

(c) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(d) Developer shall include the provisions of the foregoing paragraphs (a), (b), and (c) above in every contract, subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each such party.

(e) Developer shall, throughout the Term, comply with the Human Rights Ordinance, Chapter 11 of the Code of the County of Fairfax, Virginia, as reenacted or amended.

Section 13.20. Americans with Disabilities Act Requirements. Owner is fully committed to the Americans with Disabilities Act (ADA), which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and other programs, activities and services. Developer and its contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any contractual agreement in connection with the Infrastructure must make the same commitment. By accepting this Agreement, Developer agrees to adhere to this commitment with respect to the Infrastructure, at Owner's expense, and comply with the ADA.

Section 13.21. Appropriations. The Parties agree that any financial obligations imposed upon Owner under this Agreement shall be binding only to the extent of appropriations by the Fairfax County Board of Supervisors.

Section 13.22. License Requirement. Developer shall obtain a license to do business in Fairfax County as required by Chapter 4, Article 7, of The Code of the County of Fairfax, Virginia, as amended, entitled "Business, Professional and Occupational Licensing (BPOL) Tax." Questions concerning the BPOL Tax shall be directed to the Department of Tax Administration.

Section 13.23. Cannons of Construction of the Agreement. This Agreement shall be deemed to be made in, and in all respects shall be interpreted, construed and governed by and in accordance with, the laws of the Commonwealth of Virginia, without regard to any principles governing conflicts of laws or cannons of construction interpreting written agreement against the draftsman.

Section 13.24. Developer Estoppel. At any time and from time to time upon not less than fifteen (15) business days notice by Owner, Developer shall execute, acknowledge and deliver to Owner or any other party specified by Owner a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same as modified, is in full force and effect and stating the modifications) and stating whether or not to the best knowledge of Developer, Owner is in default in performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Developer may have knowledge, and certifying as to any other matter with respect to this Agreement as Owner or such other addressee may reasonably request.

Section 13.25. Owner Estoppels. At any time and from time to time upon not less than fifteen (15) business days notice by Developer, Owner shall execute, acknowledge and deliver to Developer or any other party specified by Developer a statement certifying that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same, as modified, is in full force and effect and stating the modifications), and stating

whether or not to the best knowledge of Owner, Developer is in default in the performance of any covenant, agreement or condition contained in this Agreement, and, if so, specifying each such default of which Owner may have knowledge, and certifying as to any other matter with respect to this Agreement as Developer or such other addressee may reasonably request.

[Signature Page Follows]

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

BOARD OF SUPERVISORS OF FAIRFAX
COUNTY, VIRGINIA, a body corporate and politic

By: _____
Edward L. Long
County Executive

WESLEY HAMEL LEWINSVILLE LLC, a
Virginia limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

DEVELOPMENT PLAN

The checklist below sets forth the responsibilities of the Developer and the County for the design, engineering, development and construction of the Infrastructure Improvements. This list identifies the party(ies) responsible for the completion of the task, but does not indicate which party(ies) assume financial responsibility. If there is a conflict between this checklist and the written provisions of the Infrastructure Development Agreement, then the written provisions of the Infrastructure Development Agreement shall govern.

A. Engineering – Design and Plans

	Description	Owner	Developer
1.	Base Sheet (including boundary survey, topographic survey)		X
2.	Record Plat Preparation and Recordation		X
3.	Grade Establishment - All Areas		X
4.	Rough/Interim (for temporary trailers) Grade – All Areas		X
5.	Earthwork Computations - Infrastructure Improvements		X
6.	Earthwork Computations – Senior and Daycare Center site		X
7.	Earthwork Computations – Senior Independent Living Residence		X
8.	Erosion & Sediment Control Plan – Infrastructure Improvements		X
9.	Erosion & Sediment Control Plan – Senior and Daycare Center site		X
10.	Post Construction Storm Water Management Plan		X
11.	Sewer and Water Plans – Mains and Laterals		X
12.	Property (not on Senior and Daycare Center site) Fine Grading Plan		X
13.	Site Development Plans		X
14.	Landscape Plan – Infrastructure Improvements		X
15.	Landscape Plan – Senior and Daycare Center site	X	
16.	Fields/Walking Path Plan (on Site Plan)		X
17.	Offsite Improvements (Great Falls Street)		X
18.	Entrance Feature (Monumental Sign)		X
19.	Telephone Plans – Primary Lines		X
20.	Cable Plans – Primary Lines		X
21.	Electric Plans – Primary Lines		X
22.	Gas Plans – Primary Lines		X
23.	Utility (All) Load Sheets for Senior and Daycare Center	X	
24.	Utility (All) Load Sheets for Senior Independent Living Residence		X
25.	Legal Descriptions and Easements		X
26.	Declaration of Covenants for the Master Development	X	X
27.	Storm Water Management Agreements	X	X
28.	Reproduction and Plan Copies, ELECTRONIC DELIVERY		X
29.	As-Built Plans – Water & Sewer		X
30.	As-Built Plans – Street Paving, Drainage		X
31.	As-Built Plans – Senior and Daycare Center site	X	
32.	Space Program for temporary trailers	X	

B. Bonds, Fees and Inspections

	Description	Owner	Developer
1.	Plat Filing & Recordation Fees		X
2.	Grading, Sediment Control Fees and Bonds*		X
3.	Street Paving Permit Fees and Bonds*		X
4.	Sidewalk Bonds (Abutting Lots), if Applicable*		X
5.	Storm Drain Permit Fees and Bonds*		X
6.	Public works and/or Utility Fees and Bonds*		X
7.	Development Plan Review Fees		X
8.	Maintenance Agreements (on SWM)	X	X
9.	Sewer and Water Connection (Tap) Fees – Senior and Daycare Center	X	
10.	Sewer and Water Connection (Tap) Fees – Senior Independent Living Residence		X
11.	Sewer and Water Availability Fees – Senior and Daycare Center	X	
12.	Sewer and Water Availability Fees – Senior Independent Living Residence		X
13.	Building Permit Fees	X	X
14.	SEA Conditions (TBD)	X	X
15.	Telecommunications Service Fee – Senior and Daycare Center	X	
16.	Telecommunications Service Fee – Senior Independent Living Residence		X
17.	Gas Service Fee – Senior and Daycare Center	X	
18.	Gas Service Fee – Senior Independent Living Residence		X
19.	Bonded Improvement Inspections		X
20.	Building Construction Building Inspection Fee (by file)	X	X
21.	Senior and Daycare Center Inspections	X	

*The County does not post or pay for bonds. The Developer will post and pay for its own proportional share of the cost of bonds based on County/Developer as determined by DPWES – LDS.

C. Engineering - Stakeout

	Description	Owner	Developer
1.	Traverse Controls and Benchmarks		X
2.	Clearing Limits of Disturbance, Mass Grading		X
3.	Rough / Intermediate Grading		X
4.	Stormwater Management		X
5.	Curb / Gutter		X
6.	Utilities – Electric (Site Development, not on Senior and Daycare Center site)		X
7.	Utilities – Gas (Site Development, not on Senior and Daycare Center site)		X
8.	Utilities – Telecommunications (Site Development, not on Senior and Daycare Center site)		X
9.	Permanent Lot Corners (1 time, at Developer's bond release)		X
10.	Senior and Daycare Center site Stakeout		X
11.	Senior and Daycare Center Brick Points and/or Foundation Pins, If	X	

	Applicable		
12.	Senior and Daycare Center Wall Check, If Required	X	
13.	Final Location Survey - Senior and Daycare Center site	X	

D. Infrastructure Improvements

	Description	Owner	Developer
1.	Clearing		X
2.	Rough Grading		X
3.	Compaction and Certification of Fills		X
4.	Storm and sanitary sewer and Water Mains and Laterals installed to within 10' of Senior and Daycare Center building footprint.		X
5.	Telephone Primary Lines installed to within 10' to the Senior and Daycare Center building footprint		X
6.	Cable Lines installed to within 10' to the Senior and Daycare Center building footprint		X
7.	Electric Lines installed to within 10' to the Senior and Daycare Center building footprint		X
8.	Gas Lines installed to within 10' to the Senior and Daycare Center building footprint		X
9.	Stormwater Management and Drainage		X
10.	Base Paving of Shared Private Streets		X
11.	Surface / Top Course Paving		X
12.	Road Stripping		X
13.	Curb / Gutter		X
14.	Sidewalks along Senior and Daycare Center site frontage	X	
15.	Sidewalks other than along Senior and Daycare Center site frontage		X
16.	Hiker/Biker Trail (Great Falls Street)		X
17.	Seeding / Sodding (Off Senior and Daycare Center site only)		X
18.	Temporary Field Improvements		X
19.	Final Field Improvements	X	
20.	Street Trees / Landscaping (excluding Senior and Daycare Center site)		X
21.	Entrance Signage (on Great Falls Street)		X
22.	Street Lights (on Great Falls Street)		X
23.	Site Lighting – On Senior and Daycare Center site	X	
24.	Site Lighting – Off Senior and Daycare Center site		X
25.	Street / Traffic Control Signage – Temporary		X
26.	Street / Traffic Control Signage – Permanent		X
27.	Erosion & Sediment Control Installation & Maintenance - On Senior and Daycare Center site	X	
28.	Erosion & Sediment Control Installation & Maintenance - Off Senior and Daycare Center site, including sediment basin/stormwater management pond		X
29.	Erosion & Sediment Control – Removal of Silt Fence and Minor Diversion Facilities – On Senior and Daycare Center site	X	
30.	Erosion & Sediment Control – Removal of Silt Fence and Minor Diversion Facilities – Off Senior and Daycare Center site		X
31.	Repairs to Bonding Improvements Caused by Developer or Developer's Agents		X
32.	Repairs to Bonding Improvements Caused by County or County's Agents	X	
33.	Recreation / Amenity – Benches, Trash Receptacles (excluding Senior		X

	and Daycare Center site)		
34.	Retaining Walls (excluding Senior and Daycare Center site)		X
35.	Manhole Grade / Rim Adjustments (excluding Senior and Daycare Center site)		X
36.	Stormwater Management Drain Inlet / Outfall Adjustments (excluding Senior and Daycare Center site)		X
37.	Offsite Improvements (Great Falls Street)		X
38.	Utilities (Water and Sewer, Telephone, and Electric) to temporary trailers for Child Care Centers		X
39.	Delivery and Installation of temporary trailers for Child Care Centers		X
40.	Site work for temporary trailers including entrance road, parking lot, and fenced play areas		X

E. Improvements – Senior and Daycare Center site

	Description	County	Developer
1.	Clearing / Demolition of Existing Improvements		X
2.	Rough Grading		X
3.	Compaction and Certification of Fills	X	
4.	Stormwater Management Drainage Inlets/Outfalls	X	
5.	Manhole Grade / Rim Adjustments	X	
6.	Water Meter Vault Adjustments (Post-Settlement)	X	
7.	Water Curb Valve Grade Adjustments (Post Senior and Daycare Center site Inspection)	X	
8.	Erosion and Sediment Control and Stabilization – During Construction of Site Infrastructure on entire site including Senior and Daycare site		X
9.	Erosion & Sediment Control – Cleaning, Filling, Compaction and Certification of On- Senior and Daycare Center site	X	
10.	Erosion & Sediment Control Device Installation and Maintenance Required for Construction of On- Senior and Daycare Center site during construction of Senior and Daycare site.	X	
11.	Erosion & Sediment Control Device Maintenance and Removal (Silt Fence, Inlet Protection, Stabilized Construction Drive and Minor Diversion Devices Only – All Others By Developer)		X
12.	Fine Grading	X	
13.	Sidewalks and Leadwalks	X	
14.	Seeding / Sodding (both Senior and Daycare Center site and Soccer Field)	X	
15.	Landscaping Foundation Planting Only	X	
16.	Water and Sewer Installation from End of Lateral to Senior and Daycare Center	X	
17.	Utilities – Electric (on Senior and Daycare Center site)	X	
18.	Utilities – Gas (on Senior and Daycare Center site)	X	
19.	Utilities – Telecommunications (on Senior and Daycare Center site)	X	

EXHIBIT B

DEVELOPMENT SCHEDULE

All dates are tied to the Developer being awarded a reservation of LIHTCs on or before July 31, 2015. If the award is not made that year, all dates will roll forward one year in accordance with Section 2.15(b). The schedule herein is informational and activities may occur around the general timeframes provided below in order to achieve the Milestones indicated in Exhibit D.

Reservation of LIHTCs	September 15, 2015
2 nd Site Plan Submission	July 2015
Site Plan Approval / Permits Obtained	November 2015
Bid Documents Completed/Major Subcontractors Prequalified	January 2016 – February 2016
Selection of Major Subcontractors/Execute GC Contract	March 2016
Relocation Period	February 2016 – May 2016
Commencement of Construction	April 31, 2016
Substantial Completion Date	August 30, 2016
Final Completion Date	September 30, 2016

EXHIBIT C - PRELIMINARY DEVELOPMENT BUDGET



	Preliminary Development Budget	Developer's Cost Allocation		Owner's Cost Allocation		Items Not Subject To Retainage (▲)	Items Not Subject To Developer Fee
Construction Costs							
General Requirements	\$156,754		\$78,377		\$78,377		
Site Improvements	\$2,982,123		\$1,279,414		\$1,702,709		
Overhead	\$59,642		\$25,799		\$33,843		X
Profit	\$149,106		\$64,499		\$84,607		X
Virginia Gross Receipts Tax	\$6,500		\$2,812		\$3,688		X
Cost Certification	\$7,500		\$3,244		\$4,256		X
Bond	\$30,388		\$13,145		\$17,243		X
Escalation (Cost Increases)	\$134,196		\$58,049		\$76,146		
Design Contingency	\$238,570		\$103,199		\$135,371		
Subtotal	\$3,764,779		\$1,628,539		\$2,136,240		
Design, Engineering and Architecture							
Design							
Landscape Architecture	\$12,420	50% Cost Share	\$6,210	50% Cost Share	\$6,210	▲	
Engineering							
Civil Engineering	\$318,000		\$186,650		\$131,350	▲	
<i>Task I - Schematic / Design Development</i>	<i>\$10,800</i>		<i>\$7,300</i>		<i>\$3,500</i>	▲	
Preliminary Base Sheet	\$1,500	50% Cost Share	\$750	50% Cost Share	\$750	▲	
Schematic / Design Development	\$5,500	50% Cost Share	\$2,750	50% Cost Share	\$2,750	▲	
Initial County Coordination	\$3,800	100% Cost Share	\$3,800	0% Cost Share	\$0	▲	
<i>Task II - Special Exception Phase</i>	<i>\$72,800</i>		<i>\$56,650</i>		<i>\$16,150</i>	▲	
Pre-Construction ALTA/ACSM Update	\$5,500	50% Cost Share	\$2,750	50% Cost Share	\$2,750	▲	
Topographic Survey	\$7,200	50% Cost Share	\$3,600	50% Cost Share	\$3,600	▲	
Limited Tree Survey	\$6,500	50% Cost Share	\$3,250	50% Cost Share	\$3,250	▲	
Utility Designation	\$3,300	50% Cost Share	\$1,650	50% Cost Share	\$1,650	▲	
Special Exception Plan (Initial Filing)	\$10,500	100% Cost Share	\$10,500	0% Cost Share	\$0	▲	
Preliminary SWM Plan	\$5,200	50% Cost Share	\$2,600	50% Cost Share	\$2,600	▲	
Certified Plat	\$1,100	50% Cost Share	\$550	50% Cost Share	\$550	▲	
Existing Vegetation Map	\$3,500	50% Cost Share	\$1,750	50% Cost Share	\$1,750	▲	
Special Exception Plan (Revisions, Meetings)	\$30,000	100% Cost Share	\$30,000	0% Cost Share	\$0	▲	
<i>Task III - Site Plan/Construction Documents</i>	<i>\$152,100</i>		<i>\$76,050</i>		<i>\$76,050</i>	▲	
Final Site Plan	\$37,000	50% Cost Share	\$18,500	50% Cost Share	\$18,500	▲	
Erosion Control Plan	\$5,500	50% Cost Share	\$2,750	50% Cost Share	\$2,750	▲	
Site Storm Drainage Study/Final Adequate Our	\$4,500	50% Cost Share	\$2,250	50% Cost Share	\$2,250	▲	
On-Site Sanitary Sewer Plan	\$3,500	50% Cost Share	\$1,750	50% Cost Share	\$1,750	▲	
Stormwater Management Plan	\$15,500	50% Cost Share	\$7,750	50% Cost Share	\$7,750	▲	
Minimum Landscape Plan / Coordination	\$6,200	50% Cost Share	\$3,100	50% Cost Share	\$3,100	▲	
Site Construction Details	\$6,500	50% Cost Share	\$3,250	50% Cost Share	\$3,250	▲	
Tree Conservation Plan	\$7,000	50% Cost Share	\$3,500	50% Cost Share	\$3,500	▲	
Sight Distance Profiles	\$1,800	50% Cost Share	\$900	50% Cost Share	\$900	▲	
Roadway Improvement Plan	\$9,600	50% Cost Share	\$4,800	50% Cost Share	\$4,800	▲	
Subdivision Plat	\$4,200	50% Cost Share	\$2,100	50% Cost Share	\$2,100	▲	
Final On-Site Easement / Dedication Plat	\$4,500	50% Cost Share	\$2,250	50% Cost Share	\$2,250	▲	
Geotechnical Plan Coordination	\$1,400	50% Cost Share	\$700	50% Cost Share	\$700	▲	
Earthwork Analysis	\$2,300	50% Cost Share	\$1,150	50% Cost Share	\$1,150	▲	
Plan Processing	\$23,000	50% Cost Share	\$11,500	50% Cost Share	\$11,500	▲	
PFM Modifications / Waivers	\$2,400	50% Cost Share	\$1,200	50% Cost Share	\$1,200	▲	
Specifications	\$2,400	50% Cost Share	\$1,200	50% Cost Share	\$1,200	▲	
Site Plan Notices	\$2,100	50% Cost Share	\$1,050	50% Cost Share	\$1,050	▲	
Dry Utility Coordination	\$4,700	50% Cost Share	\$2,350	50% Cost Share	\$2,350	▲	
Meetings & Conferences	\$8,000	50% Cost Share	\$4,000	50% Cost Share	\$4,000	▲	

EXHIBIT C - PRELIMINARY DEVELOPMENT BUDGET



	Preliminary Development Budget	Developer's Cost Allocation	Owner's Cost Allocation	Items Not Subject To Retainage (▲)	Items Not Subject To Developer Fee
<i>Task IV - Additional Services</i>	\$70,300	\$40,650	\$29,650	▲	
Soil Borings Stakeout	\$1,600	50% Cost Share \$800	50% Cost Share \$800	▲	
Alternate Pavement Design Revision	\$3,500	50% Cost Share \$1,750	50% Cost Share \$1,750	▲	
Bidding Coordination	\$2,500	50% Cost Share \$1,250	50% Cost Share \$1,250	▲	
Site Permit Processing after Plan Approval	\$5,800	50% Cost Share \$2,900	50% Cost Share \$2,900	▲	
VDOT Permit Coordination	\$4,500	50% Cost Share \$2,250	50% Cost Share \$2,250	▲	
Maintenance of Traffic (MOT) Plan	\$4,100	50% Cost Share \$2,050	50% Cost Share \$2,050	▲	
Signing and Striping (S&S) Plan	\$2,800	50% Cost Share \$1,400	50% Cost Share \$1,400	▲	
Construction Administration	\$14,000	50% Cost Share \$7,000	50% Cost Share \$7,000	▲	
Bond Reduction	\$1,200	100% Cost Share \$1,200	0% Cost Share \$0	▲	
Bond Release Assistance	\$5,000	100% Cost Share \$5,000	0% Cost Share \$0	▲	
Fairfax County Site and Sanitary As-Builts	\$8,200	50% Cost Share \$4,100	50% Cost Share \$4,100	▲	
LID / LEED and Additional 2014 SWM Compli	\$6,500	50% Cost Share \$3,250	50% Cost Share \$3,250	▲	
Final County Development Agreement Coordir	\$4,800	100% Cost Share \$4,800	0% Cost Share \$0	▲	
VSMP Permit Application	\$1,800	50% Cost Share \$900	50% Cost Share \$900	▲	
Preliminary Erosion and Sediment Control Plai	\$4,000	50% Cost Share \$2,000	50% Cost Share \$2,000	▲	
<i>Task V - Reimbursables</i>	\$8,000	50% Cost Share \$4,000	50% Cost Share \$4,000	▲	
<i>ADD SERVICE 1 - Continued VSMP Processing</i>	\$4,000	50% Cost Share \$2,000	50% Cost Share \$2,000	▲	
<i>Dry Utility Design</i>	\$100,000	50% Cost Share \$50,000	50% Cost Share \$50,000	▲	
Other					
Subtotal	\$430,420	\$242,860	\$187,560		
Owner's Construction Costs, Professional Services					
Soil Borings / Geotechnical Analysis	\$15,000	50% Cost Share \$7,500	50% Cost Share \$7,500	▲	
Utility Location Services	\$2,000	50% Cost Share \$1,000	50% Cost Share \$1,000	▲	
<i>Permit Expediter and DPE Third Party Fees</i>	<i>\$16,500</i>	<i>\$8,250</i>	<i>\$8,250</i>	▲	
Site Plan Permit	\$6,500	50% Cost Share \$3,250	50% Cost Share \$3,250	▲	
Public Improvement Plan	\$5,000	50% Cost Share \$2,500	50% Cost Share \$2,500	▲	
VDOT Permit	\$2,000	50% Cost Share \$1,000	50% Cost Share \$1,000	▲	
Demolition Permit	\$500	50% Cost Share \$250	50% Cost Share \$250	▲	
Revisions (estimated)	\$2,500	50% Cost Share \$1,250	50% Cost Share \$1,250	▲	
<i>Land Development Services Permit Fees</i>	<i>\$214,300</i>	<i>\$103,400</i>	<i>\$110,900</i>	▲	
Demolition Permit	\$7,500	0% Cost Share \$0	100% Cost Share \$7,500	▲	X
VDOT Entrance Fee	\$20,000	50% Cost Share \$10,000	50% Cost Share \$10,000	▲	X
Site Plan/Public Improvement Plan Review Fees	\$56,800	50% Cost Share \$28,400	50% Cost Share \$28,400	▲	X
Site Inspections	\$130,000	50% Cost Share \$65,000	50% Cost Share \$65,000	▲	X
<i>County Land Use Application (SEA) Fees</i>	<i>\$16,375</i>	<i>100% Cost Share \$16,375</i>	<i>0% Cost Share \$0</i>	▲	
Dry Utility Fees	\$150,000	50% Cost Share \$75,000	50% Cost Share \$75,000	▲	
Traffic Study - Preliminary Analysis	\$6,245	100% Cost Share \$6,245	0% Cost Share \$0	▲	
Wetlands Study - Preliminary Analysis	\$6,995	50% Cost Share \$3,497	50% Cost Share \$3,497	▲	
Traffic Study - Parking Observation	\$25,000	50% Cost Share \$12,500	50% Cost Share \$12,500	▲	
Wetlands Study - Additional Services	\$7,600	50% Cost Share \$3,800	50% Cost Share \$3,800	▲	
Subtotal	\$460,015	\$237,567	\$222,447		
Relocation Costs					
Resident Incentives	\$2,500	0% Cost Share \$0	100% Cost Share \$2,500	▲	
URA Payments	\$5,250	0% Cost Share \$0	100% Cost Share \$5,250	▲	
Movers and moving supplies - Residential	\$33,000	0% Cost Share \$0	100% Cost Share \$33,000	▲	
Movers and moving supplies - Commercial	\$30,000	0% Cost Share \$0	100% Cost Share \$30,000	▲	
3rd Party Packers/Box Movers	\$10,000	0% Cost Share \$0	100% Cost Share \$10,000	▲	
Utilities Connection/Disconnection Reimbursement	\$4,400	0% Cost Share \$0	100% Cost Share \$4,400	▲	
Subtotal	\$85,150	\$0	\$85,150		
Total Development Cost Subtotal	\$4,740,363	\$2,108,966	\$2,631,397		
Developer Fee Calculation					
Percent of Total Development Cost	5.5%	0% Cost Share	100% Cost Share \$130,700		
Developer's Fee	\$130,700		\$130,700		
Total Development Cost	\$4,871,063	\$2,108,966	\$2,762,097		

EXHIBIT D

MILESTONES

All dates are tied to the Developer being awarded a reservation of LIHTCs on or before September 15, 2015. If the award is not made that year, all dates will roll forward one year in accordance with Section 2.15(b).

	<u>Milestone</u>	<u>Milestone Date</u>
a)	Obtain a reservation of LIHTCs in accordance with the Financing Plan	September 15, 2015
b)	GC Contract executed and Commencement of Construction	June 30, 2016
c)	Substantial Completion	November 30, 2016
d)	Final Completion	December 31, 2016

EXHIBIT E

RELOCATION PLAN

Lewinsville Senior and Daycare Center and Senior Independent Living Residence Development

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- 5. Relocation Plan Implementation**
 - A. General Information
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 - (1) Applicable Rules, Regulations and Guidelines*
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- 6. Construction Impact Minimization**

1. CONTACT PERSONS

Developer: Wesley Hamel Lewinsville LLC
c/o Wesley Housing Development Corporation ("Wesley Housing")
Contact: Paul Browne, Director of Real Estate Development
5515 Cherokee Avenue, Suite 200
Alexandria, VA 22312
Phone: (703) 642-3830 x251
E-mail: pbrowne@whdc.org

Relocation Agent: Wesley Housing Property Management Company ("WPMC")
Contact: TBD
5515 Cherokee Avenue, Suite 200
Alexandria, VA 22312
Phone: (703) 642-3830

Property Manager: Wesley Housing Property Management Company ("WPMC")
Contact: Frank Mooney, Director of Property Management
5515 Cherokee Avenue, Suite 200
Alexandria, VA 22312
Phone: (703) 642-3830 ext. 225
E-mail: fmooney@whdc.org

The redevelopment and relocation schedules will be coordinated by the Relocation Agent in consultation with the General Contractor in order to provide all of the occupants of the Existing Lewinsville Center sufficient information throughout the process through notices and meetings so as to minimize inconvenience and confusion during the redevelopment and relocation period.

2. Definitions

30-Day Notice means the notice, if necessary, identifying the exact date of vacating an existing residential unit provided pursuant to the Virginia Housing Development Authority (VHDA).

120-Day Notice to Vacate means the notice identifying the earliest date of vacating an existing residential unit that will be provided pursuant to the Uniform Relocation Act (taking the place of the 90-day notice) and the Virginia Residential Landlord Tenant Act.

Adult Day Health Center means the daycare center for older adults and adults with disabilities operated by the Fairfax County Health Department at the Existing Lewinsville Center.

Child Daycare means the two privately operated child daycare facilities at the Existing Lewinsville Center.

Current Residents means the 22 existing households defined in Section 4 A as of the date of the Initiation of Negotiations (ION) as defined in the Uniform Relocation Act (URA).

Developer means Wesley Hamel Lewinsville LLC as the selected master developer of the infrastructure and residential building pursuant to the Infrastructure Development Agreement.

Displaced refers to the requirement that a household move out of the existing residential unit in order to allow for the construction.

Existing Lewinsville Center means collectively the existing 22 residential units and community center.

General Contractor means Hamel Builders, Inc. who will be the General Contractor for the infrastructure improvements and the residential building.

General Information Notice means the notice provided pursuant to the Uniform Relocation Act that notifies tenants about the project, planned development, timeline, and potential displacement.

Ground Lease means the Deed of Lease by and between the Board of Supervisors of Fairfax County and Wesley Lewinsville Limited Partnership as the developer of the Senior Independent Living Residence.

Infrastructure Development Agreement means the agreement by and between the Board of Supervisors of Fairfax County and Wesley Hamel Lewinsville LLC for the development of the

Lewinsville Senior and Daycare Center means the approximate 32,000 SF new public facility that will house the Adult Day Health Center, Senior Center and Child Daycare operations.

Low Income Housing Tax Credits means the federal program under which the Senior Independent Living Residence is anticipated to be financed.

Non-Residential Users means collectively the Adult Day Health Care Center, the Senior Center and the Child Daycare Centers as defined in Section 4 A.

Notice of Relocation Eligibility means the notice provided pursuant to the Uniform Relocation Act that notifies tenants of their eligibility for relocation benefits.

Option to Lease means the option to execute the Ground Lease which is expected to be executed in March 2015.

PBV Units means the units that will be subject to the new Housing Choice Voucher (HCV) Project-Based Voucher (PBV) Contract as defined in Section 4 B.

Property Manager means Wesley Property Management Company as the residential property management for the new Senior Independent Living Residence.

Relocation Agent means the Wesley-paid dedicated staff person who will implement this Relocation Plan.

Senior Center means the senior services center operated by the Fairfax County Department of Neighborhood and Community Services at the Existing Lewinsville Center.

Senior Independent Living Residence means the proposed new 82-unit senior residential building.

Uniform Relocation Act means public law 91-646, 42 U.S.C. 4601 *et seq.* and the government-wide implementing regulations found at 49 CFR part 24.

3. PROJECT SUMMARY AND OVERVIEW

The Existing Lewinsville Center is located at 1609 Great Falls Street, McLean, Virginia. It encompasses approximately 8.65 acres of land and is bounded by Vistas Lane to the North, Davis Court to the South, Great Falls Street to the West and Evers Drive to the East. The location provides access to Route 123, Route 66, I-495 and the George Washington Memorial Parkway and the new Silver line McLean Metro stop. Additionally, the property site is situated with close proximity to retail, office and hotels. The property's existing 38,355 square foot facility was constructed in 1961 and originally served as an elementary school. The property now houses the 22 unit senior Lewinsville Residences, a senior community center, an adult daycare center, and two separate private child daycare centers. The property also contains athletic fields.

Over an anticipated period of 24 months, the proposed redevelopment plan includes constructing a new Senior Independent Living Residence that will contain 82 units. It will include 72 one-bedroom and 10 two-bedroom units. It is expected that the existing 22 households will return to the new Senior Independent Living Residence after completion. Also as part of the redevelopment plan, the existing community center building will be demolished and replaced with a new Lewinsville Senior and Daycare Center. The new center will house a senior community center, an adult day health care center, and two child daycare centers. It will provide more space for all of the existing programs, which currently have insufficient space to meet the needs of the community. In order to allow the proposed renovations to occur, all occupants of the existing Lewinsville Center will have to relocate out of the Center as described in Section 5.

4. POST-REDEVELOPMENT CHANGES

A. Redevelopment Overview

The scope of the project includes the demolition of the existing physically and functionally obsolete facility and the new construction of (i) a one-story 32,100 SF community services facility containing a Senior Center (SC), Adult Day Health Care Center (ADHC) and two Child Daycare Centers as well as (ii) a two-story 82-unit Senior Independent Living Residence.

Prior to the demolition of the existing building, the then-existing households (the "Current Residents") will be relocated off-site. All income-eligible tenants who move to off-site units during the construction will have the option to move back to the new project as long as they were in good standing with their lease when they moved and remain income eligible. The expectation is that these households will return once the new Residence is complete, however, in accordance with the URA, any relocation lasting longer than one year is considered permanent. While the Adult Day Health Care Center, the Senior Center and the Child Daycare Centers are collectively referred to as the "Non-Residential Users" their relocation plans differ for each entity. The ADHC and the SC will be temporarily relocated off-site. The Child Daycare centers will temporarily relocate on-site into modular learning cottages.

Since most of the existing households have project-based Section 8 (transferable to tenant based vouchers), the residents have the option of permanently moving to a property offsite. The Developer anticipates most residents will return to the new Senior Independent Living Residence upon completion, but will work with and assist any household that chooses to permanently relocate offsite (see Section 5 C for more details).

Senior Independent Living Residence Unit Mix Pre- and Post-Construction

Pre-Construction

Unit Type	# of Units
Studios	22
Total	22

Post-Construction

Unit Type	# of Units
One Bedrooms	72
Two Bedrooms	10
Total	82

Lewinsville Senior and Daycare Center Program Pre- and Post-Construction

Pre-Construction

Use	Capacity	RSF
Adult Health Day Care	40 users	6,000
Senior Center	50 users	3,000
Child Daycare Center	210 users	10,000
Totals	300 users	19,000

Post-Construction

Use	Capacity	RSF
Adult Health Day Care	80 users	10,250
Senior Center	80 users	8,500
Child Daycare Center	210 users	12,500
Totals	300 users	31,250

B. Projected Rents

In connection with the proposed development program, 100% of the units will be assisted under the federal Low Income Housing Tax Credits program which requires that (i) tax credit eligible units be occupied by households with incomes which, adjusted for family size, do not exceed 60% of the area median income and (ii) rents for such units do not exceed 30% of that area median income limit.

Additionally, the Fairfax County Affordable Dwelling Unit Program set forth in the Zoning Ordinance ("ADU Program") and the terms of the Deed of Lease with the Board of Supervisors of Fairfax County ("Ground Lease") impose further rent restrictions on 100% of the units as follows:

Unit Rent	One Bedroom	Two Bedroom	Total	Percent of Units
30% of AMI	8	1	9	11%
50% of AMI	64	9	73	89%
Total	72	10	82	100%

The Project-Based Voucher Section 8 Housing Assistance Payment (HAP) contract for the current 22 units ("PBV Units") will be replaced when the new Senior Independent Living Residence is built, subject to rent reasonableness, environmental review, and other U.S. Department of Housing and Urban Development (HUD) requirements. Subject to the then applicable Housing Choice Voucher (HCV) payment standards, the residents will therefore only pay 30% of household income for rent. The Wesley Relocation Agent will contact Current Residents who relocated off-site to provide the first right to return to the property upon completion. Upon return to the new property, the residents will occupy one of the new PBV Units and return the tenant-based voucher received upon relocation from the current Lewinsville Residences to the Fairfax County Redevelopment Housing Authority ("FCRHA") for the project-based voucher unit to be occupied.

C. New Residential Rental Policies

As stated above, the Senior Independent Living Residence is being financed such that 100% of the units will operate under the federal LIHTC program, County ADU Program and Ground Lease requirements. There will be an annual income certification requirement for all the LIHTC units pursuant to Section 42 of the Internal Revenue Code requirements, Virginia Housing Development Authority (“VHDA”) and the Property Manager’s policies. Fairfax County has similar annual income certifications and regulatory requirements as required in Exhibit A of the Ground Lease. It is expected that so long as the property is subject to the requirements of the LIHTC program, Wesley will only certify resident incomes pursuant to the LIHTC rules. Resident income will also be income certified according to HCV and FCRHA policies by the Fairfax County Department of Housing and Community Development (HCD) Housing Services Specialist for the 22 PBV units. In the event the property is no longer subject to the LIHTC program, the Exhibit H of the ground lease will govern the criteria for affordability through the term of the ground lease.

After construction completion and upon initial lease-up, an initial income certification process will be conducted in order to determine eligibility for the LIHTC units. Based on current occupancy information as of November 2014, it is anticipated all 22 existing households will meet the LIHTC income requirements under the new lease requirements. Each household will be subject to the income limits published annually by HUD that will be in effect the year the project is placed-in-service. For reference, the current effective LIHTC limits for 2014 are as follows:

DC-MD-VA MSA LIHTC Income Limits 2014 (effective as of 12/18/2013)

Household Size	60% of Area Median Income	50% of Area Median Income	30% of Area Median Income
1 Person	\$44,940	\$37,450	\$22,470
2 Person	\$51,360	\$42,800	\$25,680
3 Person	\$57,780	\$48,150	\$28,890
4 Person	\$64,200	\$53,500	\$32,100
5 Person	\$69,360	\$57,800	\$34,680
6 Person	\$74,520	\$62,100	\$37,260

D. Estimated Schedule

The Developer plans to apply for Low Income Housing Tax Credits in March 2015. Assuming an allocation of tax credits, it is estimated that construction on the property will begin in the spring of 2016. If tax credits are not awarded in 2015, the developer would reapply in 2016. If successful in the second attempt, construction would likely begin in the spring of 2017. In all scenarios, both the Current Residents and the Non-Residential Users will receive a *minimum* of 120 days notice to vacate. The total development period from the time the first occupant is relocated to the time the last returns is anticipated to be 24 months. The following schedule assumes a successful tax credit award in 2015.

March 2015	VHDA Application; Option to Ground Lease is Executed Within 30 days GIN is sent out; Move in Notices to be issued to new residents to the property
May 5, 2015	VHDA scheduled date for Preliminary Rankings of tax credit scoring
May 29, 2015	VHDA scheduled date to announce final rankings
June 2015	VHDA published rankings [i.e. Award Notice]
June 2015	Resident relocation surveys begin.

July-August 2015	Notice of Relocation Eligibility Issued
October 2015	120 day notices are issued
February 2016	Relocation begins
April 2016	Residential Building vacated
	New construction to commence thereafter

5. RELOCATION PLAN IMPLEMENTATION

A. General Information

The Lewinsville Senior and Daycare Center and Senior Independent Living Residence Development Relocation Plan (the “Plan”) is designed to provide for the retention and the return of the Current Residents and the Non-Residential Users, while enabling the redevelopment of the property in a safe and mutually beneficial manner for the occupants and the community that is being served.

Senior citizens, by nature, are extremely likely to experience stress and disorientation as a result of major change. It is expected that the relocation of seniors, even though it would lead to improved living conditions post-construction, will cause much stress to the existing 22 resident households. As a result, the Relocation Agent is prepared to work with the FCRHA property management staff to provide guided support and sensitivity to the specific needs of each senior resident household throughout the relocation process.

The Relocation Agent is committed to working with each Lewinsville resident household as well as the Non-Residential Users to ensure understanding and comfort throughout each stage of the redevelopment and relocation while minimizing family life and service provision disruption. All tenants and resident households will be treated with the utmost level of respect and concern for their professional and personal lives as well as family constraints.

Wesley, with oversight from HCD, will work together to:

- Schedule meetings with tenants to explain the Relocation Plan.
- Encourage residents to have family members, where appropriate and desired, to help with decision-making and prepare for move(s).
- Ensure necessary translation services are available.
- Conduct a survey of the residents to determine preliminary income eligibility.
- Work with HCD Vacancy Coordinators/Property Managers to ensure residents who want to move to other FCRHA-owned Fairfax County Rental Program properties receive priority for any available vacancies.
- Issue required notices to tenants.
- Identify comparable relocation units.
- Select and retain a moving company and relocation coordinator to provide relocation services to residents.
- Issue notification of project completion and invitation to apply to Current Residents to return to the new Senior Independent Living Residence.
- Provide regular reports on relocation activities to the Fairfax County Department of Housing and Community Development.
- Assist residents with utility service provider notification.
- Assist residents in completing and submitting a Postal service notification at least two weeks in advance of move.

B. Construction Phases

The first phase of the construction period will be to install the necessary temporary and permanent infrastructure to accommodate the construction of temporary on-site learning cottages for the child daycare operations of both daycare centers to be relocated into on the site of the existing fields. At the same time, the ADHC and SC operations will be temporarily relocated off-site and the Current Residents will be relocated in accordance with the information below.

Once the existing building is fully vacated, the second phase of construction will begin whereby the existing building is demolished and infrastructure work commenced to allow for the construction of the new Lewinsville Senior and Child Daycare facility.

C. Relocation Details - Current Residents

(1) Applicable Rules, Regulations and Guidelines

Set forth below are relocation and resident retention policies and procedures that will govern the Relocation Agent and Developer in the implementation of the relocation plan. The Relocation Agent will adhere to the policies and procedures of the Virginia Housing Development Authority's *Relocation Assistance Guidelines* (rev. December 26, 2013) and the *Fairfax County Relocation Guidelines* (rev. June 22, 2012). In addition, while there are no federal funds involved in the acquisition or redevelopment of the project, the relocation of Current Residents with Project Based HCV assistance will be subject to the requirements of the *Uniform Relocation Act* (Pub. L. 91-646, 42 U.S.C. 4601 *et seq.*), and the government-wide implementing regulations found at 49 CFR part 24 (collectively, "URA") due to their participation in the HUD Project-Based Voucher Program which is covered by URA.

The Relocation Agent will update this Plan as changes are made and will make copies available to all households and tenants. Adequate general and individual records in sufficient detail will be maintained to demonstrate compliance with all applicable relocation requirements, including, but not limited to, occupant site records, timely notices to tenants, copies of signed claim forms, and canceled checks acknowledging payments or services provided to tenants. These files will be maintained for a minimum of one year. Once the project begins, Wesley will provide copies of all notices sent to tenants with evidence of receipt to the Fairfax County Department of Housing and Community Development ("HCD") staff, or other appropriate agencies, upon reasonable request for monitoring purposes and to ensure compliance with this Plan.

No later than 30 days after the last resident is relocated, the Relocation Agent will provide to VHDA the final summary schedule of moving costs made to residents in rent roll format, by resident, along with a certification by the Relocation Agent that it has met VHDA moving cost reimbursement policies in accordance with the VHDA *Relocation Assistance Guidelines*.

(2) Eligibility Requirements

Eligible Current Residents will be entitled to all services and benefits described in this Plan. The County and Wesley agree as of the date of the Initiation of Negotiations (ION) as defined in the Uniform Relocation Act (URA) that the ION is the trigger for the Notice of a Relocation Eligibility or Ineligibility per the applicable relocation regulation to be sent to all residents. Wesley will issue the Notice of Relocation Eligibility or Ineligibility within 30 days or the date the General Information Notice (GIN) is given to the tenants. The Notice of Eligibility or Ineligibility may also be sent with the GIN. Eligibility requires that households remain in good standing in accordance with the terms and conditions of their leases in effect on that date. This means that all rental payments must be up-to-date and that there are no other lease violations. All income-eligible Current Residents will be able to relocate back

into the new Senior Independent Living Residences upon completion, if they so choose provided they meet the new Residential Rental Policies described in Section 4 C above.

Any resident with household income above 60% of the Area Median Income (AMI) will be determined ineligible to relocate to the new Senior Independent Living Residences property. Such families will not be eligible for relocation assistance under this plan, but will be provided moving assistance and relocation advisory services to find new housing. If an over-income resident has income below 80% AMI, the resident will have a priority to move to another FCRHA Fairfax County Rental Program (FCRP) property per existing policy.

(3) Resident Communication and Individual Household Survey

The Developer recognizes that effective resident communication is paramount to a successful redevelopment and relocation process. The team plans, in coordination with HCD, to hold several resident meetings to discuss the relocation and redevelopment process. Additionally, one-on-one meetings will be a key component of this communication process with the residents.

Wesley Housing plans to conduct a survey of the Current Residents in order to ascertain specific household needs and plans, which will affect the overall relocation plan, as part of the one-on-one meetings. This survey will be mandatory for all households to complete as a part of the relocation process. Wesley will ensure the format of the survey is approved by the HCD Relocation Services Division in advance.

The meetings will be scheduled on-site and in accordance with resident availability. If necessary, meetings may be scheduled in evening hours or on the weekend.

During these meetings pertinent information regarding the construction and relocation process will be discussed one-on-one, questions answered and concerns eased. A detailed frequently asked questions sheet and/or summary plan will be provided to ensure accurate resident understanding and consistency of disseminated information. Whenever necessary, the Relocation Agent will provide translation of documents and/or an interpreter to assist residents with limited to no English language skills.

(4) Resident Relocation Benefits and Notice Requirements

- (a) Replacement Housing Payments. Since most of the Current Residents are subject to an existing Project-Based Voucher (PBV) Section 8 HAP contract, they will receive tenant-based Housing Choice Vouchers for relocation purposes. Each resident will continue to be responsible for only 30% of the adjusted household income for rent and therefore no rent differential anticipated, subject to the payment standard maximum, that would be required to be paid pursuant to URA.

The Wesley Relocation Agent will work with the resident and HCD Housing Specialist to ensure that a sufficient number of landlords are contacted each month. These contacts will be documented on a housing search log and submitted to the HCD staff to request timely voucher extensions, as necessary. This may include assisting the resident in “porting” the voucher to another housing authority’s jurisdiction. In the event that a resident is no longer eligible to receive the subsidy, then the resident may be eligible to receive Replacement Housing Payments up to the maximum allowable \$7,200 during a period of time up to 42 months in accordance with URA (revised as of October 1, 2014).

- (b) Advisory Services. The Relocation Agent will provide advisory services to help residents determine the most appropriate long-term relocation strategy and to ensure that persons Displaced understand the reason they are being asked to relocate and their rights and protections. Those advisory services include the provision of the following:

- Continuously working with each resident to identify and qualify an off-site comparable replacement dwelling for compliance with U.S. Department of Housing and Urban Development (HUD) housing quality standards (HQS) and payment standards to be approved by the FCRHA housing choice voucher specialist.
 - As an option of first resort, the Relocation Agent will coordinate with the FCRHA to identify opportunities for relocation to any available vacancies at other Fairfax County Senior Housing Residences as identified at Exhibit A – Senior Housing Residences.
 - Providing the General Information Notice (GIN) within 30 days of the ION indicating that the resident will be Displaced but advising the household clearly not to move immediately.
 - Providing the Notice of Relocation Eligibility which informs the resident that they will be Displaced and establishes individual eligibility for relocation assistance and payments.
 - Providing the 120-Day Notice to Vacate that specifies the earliest date by which the resident must relocate (this may be combined with and issued at the same time as the Notice of Relocation Eligibility and will include a minimum of three comparable units);
 - Providing a minimum 30-day Notice indicating the exact address of any on- or off-site temporary or permanent relocation unit and the specific date in which the move is scheduled to take place (in the event the 120-Day Notice to Vacate includes a date certain for relocation, the 30-Day Notice may not be issued);
 - Provide information regarding federal and state housing or other governmental programs that may provide additional housing assistance, as necessary;
 - Communicate the name and telephone number of the Relocation Agent contact who can answer questions or provide other needed help;
 - Extend regular business hours, including evenings and weekends, if necessary;
 - Provide additional advisory services such as interpreter services, as necessary or appropriate depending on the individual situation and circumstances.
 - Upon issuance of the GIN, the current HCD property manager will provide any new applicants to the property a move-in notice, until Wesley acquires the leasehold interest, at which time the Wesley property manager will take over this function until the building is vacated for demolition. The form of the move-in notice will be approved by HCD, to advise potential lessees that they will not be eligible for relocation benefits, including moving expenses, should they elect to move into the property. Applicants on the project-based voucher Section 8 wait list will not lose their place should they elect not to move in prior to construction of the new Senior Independent Living Residence.
- (c) Moving Coordination. Fairfax County, as the owner of the Existing Lewinsville Center, through the project development budget detailed in the Infrastructure Development Agreement by and between the Board of Supervisors of Fairfax County and Wesley Hamel Lewinsville LLC, will be responsible for payment of the moving expenses of Current Residents, both to the off-site relocation option and back to the property, if the resident so chooses. Fairfax County will hire a moving contractor to pack and move each resident, at no expense to the displaced person up to the maximum allowable under the Residential Moving Expense Payment Schedule, from the existing Lewinsville Center, and back if the family decides to return.

In cases where a displaced person's move is performed at no cost to the person, the displaced person should receive a \$100 expense and dislocation allowance.

RESIDENTIAL MOVING EXPENSE PAYMENT SCHEDULE

Effective June 22, 2012

UNFURNISHED UNITS (occupants owns furniture)

Rooms	1	2	3	4	5	6	7	8
Payment	\$600	\$800	\$1,000	\$1,200	\$1,400	\$1,600	\$1,800	\$2,000

Each additional room \$200**FURNISHED UNITS (occupants does not own furniture)**

Rooms	1	2	3	4	5	6	7	8
Payment	\$400	\$475	\$550	\$625	\$700	\$775	\$850	\$925

This schedule follows the Federal Highway Administration (FHWA) schedule for Virginia published in the Federal Register. It will be automatically amended whenever the FHWA schedule is amended. If the resident household splits and relocates to separate replacement housing, this payment may be pro-rated accordingly.

All reasonable costs directly associated with moving the household belongings and utility connection or reconnection fees will be covered for residents as part of the Relocation Plan. This includes temporary Life Line connections while off site, as long as the resident remains in compliance with the lease.

(i) Security deposits

The FCRHA, as the current landlord, will return each household's security deposit within 45 days of vacating the unit in accordance with Virginia law and will work to expedite the return of the deposits per the Fairfax County Relocation Guidelines.

In the event that there happens to be a differential between the residents' current Lewinsville deposit and the new security deposit at the off-site rental unit, the resident will be provided a security deposit differential payment. Residents will be eligible for this payment when they move to a replacement dwelling that is decent, safe and sanitary in accordance with HQS and HCD requirements. For Example:

Deposit required for replacement dwelling	\$750
Deposit held by owner/agent	<u>\$400</u>
Differential Security Deposit	\$350

(ii) Advance Payment

If a person demonstrates the extraordinary need for a relocation payment in order to avoid or reduce a hardship, the Developer or Relocation Agent may issue the security deposit differential payment prior to the move, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished. This will include making payments directly to contractors or landlords upon written request by the resident.

D. Relocation Details – Non-Residential Users***(1) Applicable Rules, Regulations and Guidelines***

It is expected that the Non-Residential Users of the facility are not subject to URA as there are no federal funds involved in the redevelopment of their facility.

(2) Eligibility

All Non-Residential Users' operations are covered by this section of the Relocation Plan.

(3) Non-Residential Users Relocation Benefits and Notice Requirements

- (a) Off-Site Relocation. The SC and ADHC operations will be temporarily relocated off-site for an anticipated period of 24 months. The Relocation Agent will provide advisory services to the tenants to help identify off-site relocation opportunities. The SC and SDHC staff will ultimately select the temporary relocation site and negotiate all rental terms and execute all rental agreements. The general space requirements as verified through interviews with the users are as follows:

	Senior Center	Adult Day Health Care
Program Space	<u>2 Program Rooms</u> <ul style="list-style-type: none">• Passive Space (w/tables and storage)• Active Space (multipurpose)	<u>1-2 Program Rooms</u> <ul style="list-style-type: none">• Minimum 1,500SF• Need quiet room or partitioned space• Coat closet/cubby space and storage <u>Clinic Area</u> <ul style="list-style-type: none">• Prefer Private Room (min. 50 SF)• Must have lockable Med Cart
Access and Parking	<ul style="list-style-type: none">• Parking for 25-35 driving participants and employees• Drop-off area for FastTran and MetroAccess buses	<ul style="list-style-type: none">• Parking for 9 employees• Drop-off area for FastTran and MetroAccess buses
Support Service Space	<ul style="list-style-type: none">• 2 offices• Check-in station• Kitchen area to heat / serve congregate meal program• Bathrooms for 60-80 participants• 1 dedicated Staff Bathroom	<ul style="list-style-type: none">• 2 offices• Check-in station• Kitchen area to heat / serve congregate meal program• Min 3 ADA accessible toilets and 2 sinks• 1 dedicated Staff Bathroom
Other	<ul style="list-style-type: none">• Hours: 9AM – 4:00PM (M-F)	<ul style="list-style-type: none">• Need to secure entrances/exits• Hours: 7AM – 5:30PM (M-F)

- (b) On-Site Relocation. The two Child Daycare providers will be temporarily relocated on-site into modular learning cottages for an anticipated period of 24 months. To the extent that it is feasible, consideration will be given to the school and summer schedules when scheduling relocation of the Child Daycare centers.
- (c) Moving Coordination. The Relocation Agent will coordinate all direct relocation services for the Senior Center, Adult Day Health Care center and Child Daycare providers. The Relocation Agent will find and identify movers, propose timeframes for the moves, and directly contract with the movers on behalf of the County for the mover's services including the provision of boxes and moving supplies. The tenants will be responsible for packing in advance of the moving date. Fairfax County will fund the cost of the move in accordance with the terms of the Infrastructure Development Agreement.

E. Staffing

The Developer understands the need for resident and community center tenant access to information regarding construction and relocation before and during the project development period. Therefore, the Developer will provide a dedicated staff member to act as the Relocation

Agent that will work directly with the Current Residents as well as the Non-Residential Users to provide services and timely information. The construction and relocation schedule will be coordinated by the Relocation Agent, Property Manager and the General Contractor in order to provide the Current Residents and Non-Residential Users sufficient information. Information will be shared through written notices, translated as necessary; and both all residents and one-on-one meetings, as appropriate. The staffing aim is to minimize resident and tenant inconvenience and confusion during the redevelopment period.

6. CONSTRUCTION IMPACT MINIMIZATION

Redevelopment and temporary or permanent relocation that occurs as a result of the construction process is inherently disruptive, particularly to senior citizens. To minimize such disruption, the Owner will implement this Plan in cooperation with the community. All residents will be kept informed of scheduling for construction through notices and ongoing resident meetings as necessary after the commencement of redevelopment. As described above, prior to starting construction, the Property Manager, the General Contractor, and the Relocation Agent will meet with the residents to explain the redevelopment process.

EXHIBIT F

ESTIMATED FUNDING SOURCES

Below are the estimated funding sources to provide construction and permanent financing for the Horizontal Project as of the date of this Agreement. It is anticipated that these sources as well as the allocable portions thereof may change before Commencement of Construction.

Developer's Cost Allocation

Low Income Housing Tax Credit Equity	\$1,054,483
First Mortgage Debt	<u>\$1,054,483</u>
	\$2,108,966

Owner's Cost Allocation

Capital Improvement Program Bonds	<u>\$2,762,097</u>
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Total Funding Sources \$4,871,063

EXHIBIT G

COMPLETION GUARANTY

(Infrastructure Development Agreement Guaranty)

THIS **COMPLETION GUARANTY** (this "Guaranty") is made and entered into this ____ day of _____, 2015, by and among **WESLEY HOUSING DEVELOPMENT CORPORATION OF NORTHERN VIRGINIA**, a Virginia non-profit corporation ("Wesley Guarantor"); and **HAMEL BUILDERS, INC.**, a Maryland corporation ("Hamel Guarantor," and Wesley Guarantor and Hamel Guarantor being hereinafter referred to both individually and collectively, where the context may require, as "Guarantor"), for the benefit of the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity and not in its governmental or regulatory capacity (the "County").

RECITALS:

WHEREAS, the County and Wesley Hamel Lewinsville LLC, a Virginia limited liability company (the "Developer") entered into that certain Infrastructure Development Agreement dated as of the date hereof (the "Development Agreement"), covering certain real property located in Fairfax County, Virginia, more particularly described therein;

WHEREAS, as a material inducement to the County entering into the Development Agreement, Developer is obligated to deliver a completion guaranty; securing the payment and performance of Developer's obligations under the Development Agreement;

WHEREAS, Developer has caused the delivery of this Guaranty by Guarantor, to satisfy Developer's obligations with respect to the foregoing Recital; and

WHEREAS, Guarantor will receive material benefit from the execution of this Guaranty and the execution of the Development Agreement by Developer;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby guarantees the Guaranteed Obligations (hereinafter defined) upon the following terms and conditions:

1. Incorporation of Recitals; Defined Terms. The Recitals set forth above are hereby incorporated in this Guaranty by this reference. Capitalized terms used in this Guaranty and not otherwise defined herein shall have the meanings set forth in the Development Agreement.

2. Guaranteed Obligations. Each Guarantor, jointly and severally,

irrevocably and unconditionally guarantees to the payment and performance of all Guaranteed Obligations in this Guaranty. The term "Guaranteed Obligations," as used herein means the timely payment and performance of all of Developer's obligations under the Development Agreement; including, without limitation: (i) the full and timely performance of all of the Work in strict accordance with the terms of the Development Agreement, free and clear of any and all liens or encumbrances which may arise from, or in any way relate to the Work (except and limited to the extent such liens or encumbrances or expressly provided for in the Development Agreement); and (ii) the full and timely payment of all contractors, subcontractors, materialmen, engineers, architects or other persons or entities who have rendered or furnished services or materials that are the obligations of Developer under the Development Agreement. Nothing in this Section is intended to transfer, waive or release Developer from its obligations under the Development Agreement.

3. Enforcement of Guaranty. Upon the occurrence of a default by Developer in the timely payment or performance, as the case may be, of any of its obligations under the Development Agreement which constitute Guaranteed Obligations hereunder (or any part thereof) and which continues beyond any applicable notice and cure periods provided for in the Development Agreement, Guarantor shall, within thirty (30) days from the date of notice from the County, pay or perform any Guaranteed Obligations then to be paid or performed, at its sole cost and expense. Notwithstanding the foregoing, Guarantor will not be responsible for any Guaranteed Obligations if (and only to the extent that) Developer is unable or precluded from paying or performing such Guaranteed Obligations as a direct result of the County's failure to perform its obligations under the Development Agreement. For illustrative purposes only, if Developer is unable to complete the Work as a result of the County's failure to contribute Owner's Cost Allocation as provided in the Development Agreement, Guarantor will not be responsible for such Guaranteed Obligations under this Guaranty (unless and until the County has contributed such Owner's Cost Allocation and provided notice to Guarantor with the appropriate notice and cure periods set forth herein); *provided further*, that Guarantor shall be responsible for fulfilling the Guaranteed Obligations to the extent Developer would be obligated to up to its obligations of Developer's Cost Allocation in the Development Agreement.

4. Cumulative Remedies. The exercise by the County of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy; *provided however*, that in any event the County shall be entitled to only one recovery (i.e. no "double recovery") for each of the Guaranteed Obligations from Developer and Guarantor, collectively.

5. Direct Action Against Guarantor. It shall not be necessary for the County, in order to enforce the Guaranteed Obligations, first to institute suit or exhaust its remedies against Developer or others liable on such indebtedness, liability, undertaking, or obligation, or to enforce its rights against any security which shall ever have been given to secure the same. Each Guarantor acknowledges and agrees that it is a primary party of this Guaranty and not merely a surety of the Development Agreement.

6. Unimpaired Liability. Guarantor hereby agrees that its obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by the occurrence of any one or more of the following events: (a) the taking or accepting of any other security or guaranty for any or all of the Guaranteed Obligations; (b) any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Obligations; (c) the insolvency, bankruptcy, or lack of partnership or corporate power of Developer, or any party at any time liable for any or all of the Guaranteed Obligations, whether now existing or hereafter occurring; (d) any neglect, delay, omission, failure, or refusal of the County to take or prosecute any action for the collection of any of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations; (e) subject to Section 3 above, the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Developer or the County, whether in connection with the Project or any other transaction; (f) any assignment of the Development Agreement or the Guaranteed Obligations or any part thereof; (g) the unenforceability of all or any part of the Guaranteed Obligations against Developer by reason of the fact that the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or the officers creating same acted in excess of their authority; (h) any payment by Developer to the County in respect of the Guaranteed Obligations is held to constitute a preference under the bankruptcy laws or if for any other reason the County is required to refund such payment or pay the amount thereof to someone else; or (i) any impairment, modification, release, or limitation of liability of Developer or its estate in bankruptcy, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or from the decision of any court interpreting same.

7. Binding Effect. This Guaranty is for the benefit of the County and its respective successors and assigns.

8. Representations and Warranties. Each Guarantor represents and warrants for itself (but not the other Guarantor hereunder) that (a) it will receive a direct or indirect material benefit from the execution and delivery of the Development Agreement; (b) this Guaranty has been duly authorized by all necessary corporate action on Guarantor's part and has been duly executed and delivered by a duly authorized agent of the limited liability company; (c) this Guaranty constitutes Guarantor's valid and legally binding agreement, enforceable in accordance with its terms; (d) Guarantor's execution of this Guaranty will not violate Guarantor's organizational documents or result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject or violate any order, judgment or decree to which Guarantor or any of its assets is subject; (e) no action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material adverse effect on Guarantor's ability to perform its obligations under this

Guaranty; and (f) Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty.

9. Affirmative Covenants. At all times until the Guaranteed Obligations have been fully satisfied, Guarantor will maintain the covenants set forth herein:

a. Financial Covenants. At all times until the Guaranteed Obligations have been fully satisfied, each Guarantor shall comply the following financial covenants:

(i) Net Worth Covenant. Each Guarantor will maintain a tangible aggregate net worth at least equal to Five Million Dollars (\$5,000,000). For purposes of this Guaranty, "tangible aggregate net worth" means, as of a given date, each Guarantor's aggregate equity calculated in conformance with generally accepted accounting principles by subtracting total liabilities from total tangible assets.

(ii) Liquidity. Each Guarantor will maintain liquidity at least equal to Five Hundred Thousand Dollars (\$500,000). For purposes of this Guaranty, "liquidity" means (A) cash, (B) cash equivalents, (C) unencumbered, marketable securities and (D) immediately available, unused lines of credit.

b. Financial Reporting Requirements. Every twelve (12) months after execution of this Guaranty, and at such other times as the County may reasonably request (including, without limitation, at any time after the occurrence and during the existence of Cause under the Development Agreement), each Guarantor shall provide a financial statement, certified by such Guarantor to be true and correct in all material respects, with sufficient detail, as reasonably requested by the County, for the County to determine that such Guarantor has satisfied its financial covenants set forth herein.

c. Corporate Existence. Each Guarantor will do any and all things necessary to preserve and keep in full force and effect its corporate status in good standing under the laws of the state of its organization and in the Commonwealth of Virginia.

10. Waiver and Subordination; Joint and Several Liability. Guarantor (a) waives to the fullest extent permitted by law: (i) any rights that Guarantor may have against Developer by reason of any one or more payments or acts in compliance with the obligations of Guarantor hereunder, (ii) to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against Guarantor, (iii) all rights and remedies accorded by applicable law to sureties or guarantors, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty), and (iv) to presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand (except as may be otherwise expressly required herein); and (b) subordinates any liability or indebtedness of Developer held by Guarantor to the obligations of Developer to the County under the Development Agreement for the Guaranteed Obligations. The liability of each Guarantor hereunder shall be joint and several. Nothing in this Guaranty shall

prevent any Guarantor from entering into a contribution agreement (or other agreement for the division of responsibilities of payment or performance) for the Guaranteed Obligations of this Guaranty with any other Guarantor, *provided however*, that the failure of any Guarantor to make a payment under any such contribution agreement shall not diminish the obligations of the other Guarantor to be fully liable for the entire Guaranteed Obligations in this Guaranty. Each Guarantor agrees that any liability or indebtedness of a Guarantor held against another Guarantor is subordinate to such Guarantor's obligations to the County under this Guaranty. Each Guarantor agrees that no payment by it under this Guaranty shall give rise to any rights of subrogation against Developer or the Horizontal Project. Each Guarantor agrees that any liability or indebtedness of Developer held by Guarantor is subordinate to Developer's obligations to the County under the Development Agreement.

11. Enforcement Costs. Guarantor hereby agrees to pay, on written demand by the County, all costs incurred by the County in collecting any amount payable under this Guaranty or enforcing or protecting its rights under the Guaranty in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys and other hired professionals, court fees, costs incurred in connection with pre-trial, trial and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by the County shall be immediately due and payable, and shall bear interest from the date of disbursement until paid in full, if not paid in full within ten (10) business days after the County's written demand for payment at a rate equal to twelve percent (12%) per annum, compounded monthly, or the highest amount allowed by law, whichever is less. Notwithstanding the foregoing, in the event the County elects to proceed directly against Guarantor in accordance with Section 5 above, prior to either, (a) an agreement between Developer and the County of liability and amounts payable for the Guaranteed Obligations, or (b) a determination of a court of competent jurisdiction as to the liability and amounts of the Guaranteed Obligations to be paid or performed by Developer under the Development Agreement.

12. Notices. Any notice, demand, statement, request or consent made hereunder shall be in writing and shall be deemed to be received by the addressee on the day such notice is delivered in hand, on the following day if tendered to a nationally recognized overnight delivery service or on the third day following the day such notice is deposited with the United States Postal Service first class certified mail, return receipt requested, in either instance, addressed to the address, as set forth below, of the party to whom such notice is to be given, or to such other address as either party shall in like manner designate in writing. The addresses of the parties are as follows:

Guarantor:

Wesley Housing Development Corporation
5515 Cherokee Avenue
Suite 200

Alexandria, VA 22312
Attention: Paul P. Browne

And:

Hamel Builders Inc.
5710 Furnace Avenue
Suite H
Elkridge, MD 21075
Attention: Philip W. Gibbs

With a Copy to:

Klein Hornig LLP
1275 K Street, NW
Suite 1200
Washington, DC 20005
Attention: Erik T. Hoffman

County:

Board of Supervisors of Fairfax County, Virginia
12000 Government Center Parkway
Fairfax, VA 22035
Attention: County Executive

With a Copy to:

Office of the County Attorney
Attention: County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, VA 22035-0064

13. Governing Law. **THIS GUARANTY SHALL BE GOVERNED BY, INTERPRETED UNDER THE LAWS OF, AND ENFORCED IN THE COURTS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT ITS REGARD TO THE APPLICATION OF ITS INTERNAL RULES GOVERNING CONFLICTS OF LAWS. ANY ACTION OR CLAIM UNDER THIS GUARANTY THAT IS BROUGHT IN A COURT OF LAW SHALL BE BROUGHT SOLELY IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, OR IN THE EASTERN DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION, OR IN THEIR RESPECTIVE SUCCESSOR COURTS.**

14. Unenforceable Provisions; Severability. If any provision of this Guaranty

is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

15. Entire Agreement. This Guaranty represents the entire agreement by and between Guarantor and the County with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

16. Headings. The headings in this Guaranty have been used for administrative convenience only and should not be used in interpreting and construing the meaning of any provision of this Guaranty.

17. Time of the Essence. Time is of the essence in the performance of this Guaranty.

18. Counterparts; Facsimile Signatures. Any party may execute this Guaranty by delivery to the other party of a facsimile copy hereof evidencing such party's signature. In any such case, the party executing by facsimile shall promptly thereafter provide a signed original counterpart hereof to the other parties; provided, that the non-delivery of such a signed counterpart shall not affect the validity or enforceability hereof.

19. Termination. This Guaranty shall terminate without further action upon the completion of all of the Guaranteed Obligations under the Development Agreement and the payment and performance of any and all Guaranteed Obligations that are due to be paid or performed at the time of such termination.

[Signature Page Follows]

IN WITNESS WHEREOF, each Guarantor has executed this Guaranty as of the date and year first written above.

WESLEY GUARANTOR

WESLEY HOUSING DEVELOPMENT CORPORATION OF NORTHERN VIRGINIA, INC., a Virginia non-profit corporation

By: _____
Name: _____
Title: _____

HAMEL GUARANTOR

HAMEL BUILDERS, INC., a Maryland corporation

By: _____
Name: _____
Title: _____

EXHIBIT H

ENVIRONMENTAL CONDITIONS REPORTS

1. Phase I/II Environmental Site Assessment, dated October 15, 2008 for Lewinsville Senior Center, 1609 Great Falls Street, Fairfax County Virginia, prepared by Environmental Consultants and Contractors, Inc.