

Prepared by and after recording return to:  
Alan M. Weiss, Assistant County Attorney  
Office of the County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035

Tax Map Reference Number: \_\_\_\_\_

EXEMPT FROM RECORDATION TAX PURSUANT TO VA CODE §58.1-811(A)(3)

RIGHT OF FIRST REFUSAL AGREEMENT

This RIGHT OF FIRST REFUSAL AGREEMENT (this “Agreement”) is made as of March 15, 2021 (“Effective Date”) by and between AUTUMN WILLOW 9, LLC, a Virginia limited liability company, having an address of 3 East Stow Road, Suite 100, Marlton, NJ 08053, its successors and assigns (“Owner”) (GRANTOR for purposes of indexing), and FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, a political subdivision of the Commonwealth of Virginia, having an address of 3700 Pender Drive, Suite 300, Fairfax, Virginia 22030 (“Grantee”) (GRANTEE for purposes of indexing).

WHEREAS, Owner and Grantee (“Landowner”) have entered into that certain Deed of Ground Lease, as amended, pursuant to which the Owner owns a leasehold interest in the real property described at Exhibit A attached hereto (the “Subject Parcel”) for the purposes of developing an affordable housing project containing approximately 75 units (“Project”), that is a condominium unit in a condominium; and

WHEREAS, Grantee, concurrently with the execution and delivery of this Agreement, has entered into documents and other related agreements evidencing a loan by Grantee to Owner concerning the Project; and

WHEREAS, Grantee’s cooperation and loan funding are instrumental in the development of the Project; and

WHEREAS, the Owner intends to apply for certain financing, including tax credits from Virginia Housing (formerly the Virginia Housing Development Authority) (“Tax Credit Competition”) and upon winning and closing on such tax credit and other financing, the Project is or will be subject to one or more governmental agency regulatory agreements (the “Regulatory Agreements”) restricting its use to low- and moderate-income housing (such use restrictions under the Regulatory Agreements being referred to collectively herein as the “Use Restrictions”); and

WHEREAS, the Owner plans to finance its construction of the Project, in part, through the syndication of low income housing tax credits allocated to the Project to certain equity investor members (collectively, the “Non-Managing Members”) in exchange for an interest in the Owner; and

WHEREAS, it is contemplated that the Non-Managing Members shall be admitted into the Borrower pursuant to a certain amended and restated operating agreement dated on or about the date of such admission (the “Operating Agreement”) by and between the Non-Managing Members and Autumn Willow 9 MM, LLC (the “Managing Member” and collectively with the Non-Managing Member, the “Members”); and

WHEREAS, Grantee and Owner desire to provide for the continuation of the Project as low-income housing as set forth in this Agreement.

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Grant of Year 15 Refusal Right.

- 1.1. Commencing on the day following December 31 of the 15th year of the Compliance Period (as defined in Section 42 of the Internal Revenue Code (the “Code”) and for a period of twelve (12) months thereafter, if the Owner receives an offer to purchase the Project from a third party, other than any offer by the managing member of the Owner, an affiliate of The Michaels Development Company I, L.P. (“TMDC”) or of Grantee, or their respective successors or assigns, and the Owner intends to accept such Offer (“Offer”), then Grantee will have a right of first refusal to purchase the Project (“Y15 Refusal Right”) on the terms and conditions, and subject to the conditions precedent specified in this Agreement. Prior to accepting any Offer, the Owner will deliver to Grantee a copy of the Offer (“Offer Notice”). The Owner will not accept any Offer unless and until the Y15 Refusal Right has expired without exercise by Grantee.
- 1.2. The foregoing grant of the Y15 Refusal Right will be effective only if Grantee is a governmental entity or qualified nonprofit organization, as defined in Section 42(i)(7) of the Internal Revenue Code of 1986, as amended (the “Code”) at the time it receives the Offer Notice and remains such as of (i) the date that the Y15 Refusal Right has been exercised and the resulting purchase and sale has closed, or (ii) the date that the Y15 Refusal Right has been assigned to a Permitted Assignee (defined below). Any assignment and the corresponding grant of the Y15 Refusal Right permitted under Section 4 below will be effective only if the assignee is at the time of the assignment and remains at all times thereafter, until the Y15 Refusal Right has been exercised and the resulting purchase and sale has been closed, a Permitted Assignee.

- 1.3. The Y15 Refusal Right purchase price for the Project (“Y15 Purchase Price”) pursuant to the Y15 Refusal Right will be the sum of (i) the principal amount of outstanding obligations or indebtedness of the Partnership or secured by the Project, and (ii) all Federal, state and local taxes projected to be imposed on the partners or members of the Owner in connection with such sale including federal income tax liability incurred as a result of the payment of purchase price, plus, to the extent the proceeds of Y15 Purchase Price would be insufficient to provide such amounts, an additional amount sufficient to assure receipt by the Non-Managing Members of the Owner from the proceeds of the sale of the Project (when distributed pursuant to the provisions of the Operating Agreement) of an amount not less than the sum of all federal, state and local taxes, including without limitation, all income taxes due upon sale, incurred or to be incurred by the Non-Managing Members (or their constituent partners or members) as a result of such sale plus the amount of any theretofore unpaid tax credit shortfall payments, asset management fees or other debts or obligations, to which the Non-Managing Members, as applicable, are entitled under the Operating Agreement). For avoidance of doubt, the Y15 Purchase Price shall not be less than the “Minimum Purchase Price” set forth in Section 42(i)(7)(B) of the Code. For avoidance of doubt, the Y15 Purchase Price shall not be less than the “Minimum Purchase Price” set forth in Section 42(i)(7)(B) of the Code.
2. Conditions Precedent. Notwithstanding anything in this Agreement to the contrary, the Y15 Refusal Right shall be contingent on the following:
- (a) The Owner successfully obtains an award of tax credits from the Tax Credit Competition and such financing is part of the acquisition or construction of the Project.
- (b) Either (i) the Regulatory Agreements shall have been entered into and remain in full force and effect, or (ii) if the Regulatory Agreements are no longer in effect due to reasons other than a default thereunder by Owner, such Use Restrictions shall have remained in effect as to the Project by other means.
- If any or all of such conditions precedent have not been met, the Y15 Refusal Right shall not be exercisable.
3. Exercise of Y15 Refusal Right. The Y15 Refusal Right each may be exercised by Grantee by (a) giving prior written notice of its intent to exercise the Y15 Refusal Right to Owner and each of its Members in the manner provided in Paragraph 6 and in compliance with the requirements of this Paragraph 4, and (b) complying with the closing requirements of this Agreement. Any such notice of intent to exercise the Y15 Refusal Right shall be given within ninety (90) days after Grantee has received Owner’s Offer Notice pursuant to Paragraph 2.1 hereof. In either case, the notice of intent shall specify a closing date within one hundred twenty (120) days immediately following the date of exercise, which date may be extended as may be provided in a purchase and sale contract agreed upon by the parties. If the foregoing

requirements (including those of Paragraph 3 hereof) are not met as and when provided herein, the Y15 Refusal Right, or both, as applicable, shall expire and be of no further force or affect.

4. Assignment. Grantee may assign all or any of its rights under this Agreement to (a) a qualified nonprofit organization, as defined in Section 42(h)(5)(C) of the Code, (b) a government agency, or (c) a tenant organization (in cooperative form or otherwise) or resident management corporation of the Project (each a “Permitted Assignee”) that demonstrates its ability and willingness to maintain the Project as low-income housing in accordance with the Use Restrictions. Prior to any assignment or proposed assignment of its rights hereunder, Grantee shall give written notice thereof to the Owner. Upon any permitted assignment hereunder, references in this Agreement to Grantee shall mean the Permitted Assignee where the context so requires, subject to all applicable conditions to the effectiveness of the rights granted under this Agreement and so assigned. No assignment of Grantee's rights hereunder shall be effective unless and until the Permitted Assignee enters into a written agreement accepting the assignment and assuming all of Grantee's obligations under this Agreement and copies of such written agreement are delivered to Owner. Except as specifically permitted herein, Grantee's rights hereunder shall not be assignable.
  
5. Notices. All notices, demands, requests and other communications required or permitted hereunder shall be in writing and shall be deemed to have been given when delivered in person or sent by registered or certified mail, postage prepaid, return receipt requested, or by recognized overnight delivery service, to the persons and at the addresses set forth below or to such other persons or addresses as the party entitled to notice shall have specified in writing to the other party hereto from time to time.

5.1. To the Grantee:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030  
Attention: Thomas E. Fleetwood, Assistant Secretary

with a copy, which shall not constitute notice, to:

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

5.2. To the Owner:

**AUTUMN WILLOW 9, LLC,**  
C/O The Michaels Development Company I, L.P.  
PO Box 90708

Camden, NJ 08101  
Attn: Kenneth P. Crawford, COO

with copies, which shall not constitute notice, to each of:

The Michaels Development Company I, L.P.  
1700 Development Road, Suite 330,  
Alexandria, VA 22314  
Attention: Nicholas C. Bracco

Levine, Staller, Sklar, Chan & Brown, P.A  
3030 Atlantic Avenue  
Atlantic City, NJ 08401  
Attention: Arthur M. Brown, Esquire

Klein Hornig LLP  
1325 G Street NW, Suite 700  
Washington, DC 20005  
Attention: Erik T. Hoffman  
Fax No.: (202) 842-0125

All notices, demands and requests shall be effective upon such personal delivery or upon being deposited in the United States mail or with the overnight delivery service as required above. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party written notice thereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

6. Mediation. In the event the purchase price for the Project is sought to be settled through mediation, or in the event of any other dispute hereunder, each of Grantee, Owner or its successor in interest, and Owner's Members shall exercise best efforts in good faith to reach agreement within 30 days after the initiation of a mediation process conducted by a single mutually acceptable mediator who shall be selected within 15 days after one party requests mediation hereunder. Such mediator shall conduct proceedings in the geographic area in which the Project is located, according to such procedures as the mediator shall designate, provided that they are fair and in accordance with mediation procedures generally accepted in the geographic area in which the Project is located. Such mediation is intended to facilitate agreement and shall not be binding. The costs of the mediator shall be borne equally by the parties and each party shall bear the cost of its own counsel and out-of-pocket expenses in connection with the mediation. In the absence of the selection of a mutually acceptable mediator or in the absence of an agreement by such parties after such periods as provided for

above, each party may, at its option, take any action available to it in law or equity in any court of competent jurisdiction.

7. Miscellaneous. This Agreement shall be liberally construed in accordance with the laws of the Commonwealth of Virginia in order to effectuate the purposes of this Agreement. This Agreement may be executed in counterparts or counterpart signature pages, which together shall constitute a single agreement.
8. Subordination. This Agreement is and shall remain automatically subject and subordinate to any mortgage to (or assigned to) an institutional or governmental lender or any other entity holding first-position debt secured by the Project and, in the event of a foreclosure of any such mortgage, or of the giving of a deed in lieu of foreclosure to any such mortgagee, the Y15 Refusal Right granted hereunder shall not apply to such foreclosure or deed in lieu, and this Agreement shall become void and shall be of no further force or effect.
9. Termination. In the event Grantee does not exercise the Y15 Refusal Right and the Project is transferred to a purchaser that is not either a Member or an affiliate of TMDC or its successors or assigns, Grantee shall be deemed to have waived its Y15 Refusal Right hereunder and this Agreement shall become void and shall be of no further force or effect. Upon written request, the Grantee will provide written confirmation of such waiver, through no such documentation shall be required for its waiver to have become effective.
10. Amendment. This Agreement shall not be amended, modified, or supplemented without the prior written consent of any and all mortgagees whose loans are secured by a deed of trust (or similar security instrument) recorded against the Project and the Non-Managing Members of Borrower.

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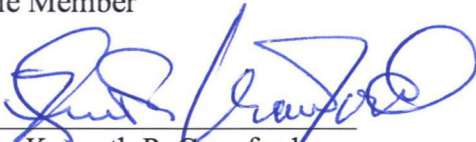
[SIGNATURE PAGE TO RIGHT OF FIRST REFUSAL AGREEMENT 9% - GRANTOR]

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

**GRANTOR:**

**AUTUMN WILLOW 9, LLC,**  
a Virginia limited liability company

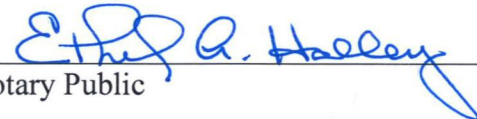
By: Autumn Willow 9-Michaels, LLC,  
a Virginia limited liability company,  
its Sole Member

By:   
Name: Kenneth P. Crawford  
Title: Authorized Representative

State/~~Commonwealth~~ of New Jersey  
County of Camden

The foregoing instrument was acknowledged before me Ethel A. Halley this 15<sup>th</sup> of March, 2021, by Kenneth P. Crawford, Authorized Representative and on behalf of Autumn Willow 9-Michaels, LLC, a Virginia limited liability company, managing member of Autumn Willow 9, LLC, a Virginia limited liability company.

ETHEL A HALLEY  
NOTARY PUBLIC  
State of New Jersey  
My Commission Expires 8-22-22

  
Notary Public

[Signatures continue on the next page.]

[SIGNATURE PAGE TO RIGHT OF FIRST REFUSAL AGREEMENT 9% - GRANTEE]

**GRANTEE:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**

By: \_\_\_\_\_  
Name: Thomas E. Fleetwood  
Title: Assistant Secretary

COMMONWEALTH OF VIRGINIA )  
CITY/COUNTY OF Fairfax ) To wit:

The foregoing instrument was acknowledged before me a notary public in and for the aforesaid state and city/county this 11 day of March 2021, by Thomas E. Fleetwood, the Assistant Secretary of the Fairfax County Redevelopment and Housing Authority.

  
\_\_\_\_\_  
Notary Public





EXHIBIT A

TO RIGHT OF FIRST REFUSAL AGREEMENT 9%

LEGAL DESCRIPTION

Beginning at a point on the easterly right-of-way line of Stringfellow Road, Route 645, said point also being on the southerly right-of-way line of Autumn Willow Drive, Route 7988, thence departing the easterly right-of-way line of Stringfellow Road and with the southerly right-of-way line of Autumn Willow Drive the following two (2) courses;

to a point being the northwesterly corner of the land of the Fairfax County Park Authority, thence departing the southerly right-of-way line of Autumn Willow Drive and with the westerly line of the Fairfax County Park Authority the following course;

S 05° 28' 06" W, 808.74 feet;

to a point being the northeasterly corner of other land of the Fairfax County Park Authority, thence departing the westerly line the Fairfax County Park Authority and with the northerly line the Fairfax County Park Authority the following course;

N 75° 17' 52" W, 644.82 feet to a point;

to a point being on the easterly line of other land of the Fairfax County Park Authority, thence departing the northerly line the Fairfax County Park Authority and with the easterly line the Fairfax County Park Authority and then the easterly right-of-way of Stringfellow Road (at 514.84 feet) the following two (2) courses;

N 10° 28' 01" E, 723.47 feet to a point;

N 36° 27' 31" E, 38.67 feet

to the point of beginning containing 474,183 square feet or 10.88574 acres of land,

Less and Except the following;

Starting at a point on the southerly right-of-way line of Autumn Willow Drive, Route 7988, said point also being the northwesterly corner of the land of the Fairfax County Park Authority, thence S57°59'53"W, 185.90 feet, to the true point of beginning, thence running through the land of the Fairfax County Redevelopment and Housing Authority the following eight (8) courses;

S 06° 32' 42" E, 266.17 feet to a point;

S 83° 29' 05" W, 27.86 feet to a point;

S 06° 30' 55" E, 206.62 feet to a point;  
S 83° 29' 05" W, 80.12 feet to a point;  
N 06° 20' 55" W, 334.92 feet to a point;  
N 80° 33' 55" W, 27.04 feet to a point;  
N 07° 57' 53" E, 132.31 feet to a point;  
N 82° 08' 35" E, 99.82 feet;

to the point of beginning containing 46,157 square feet or 1.05961 acres of land,

leaving a residual area of 428,026 square feet or 9.82613 acres of land.