

**INTERIM AGREEMENT
(Autumn Willow Senior Housing Property)**

THIS INTERIM AGREEMENT (this “**Agreement**”) is made and entered into as of the ___ day of _____, 2020 (the “**Effective Date**”), by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **THE MICHAELS DEVELOPMENT COMPANY I, LP**, a Virginia limited partnership (“the **Developer**”), and together with the FCRHA, collectively, the “**Parties**”).

RECITALS

R-1 The FCRHA is the fee simple owner of the property located in the south east quadrant of the intersection of Stringfellow Road and Autumn Willow Road in Fairfax County, Virginia, identified by Tax Map No. 55-3((1)) Parcel 26B (the “**Autumn Willow Property**”).

R-2 In December 2019, the Fairfax County Department of Purchasing and Supply Management (“**Purchasing Agent**”) issued a “Request for Proposals” (the “**RFP**”) pursuant to provisions of the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 and the guidelines adopted by the FCRHA with respect thereto (collectively, the “**PPEA**”). The RFP included the following evaluation criteria: Financial feasibility, Degree to which Development Plans meets FCRHA’s goals (inclusive of design), Development team experience, Affordability, Community outreach, and Commitment to use FCRHA bond financing.

R-3 In March 2020, the Purchasing Agent received a number of responses to the RFP proposing to construct affordable senior housing on the Autumn Willow Property.

R-4 The County review team has evaluated all of the proposals and upon completion of this evaluation, the Developer’s submission to the RFP was ranked the top proposal. The review team recommended to the FCRHA that the County negotiators should commence negotiations with the Developer for the development of Autumn Willow Property.

R-5 The proposed development (the “**Development**”) is anticipated to provide for construction of approximately 150 independent affordable senior housing units in one building with surface parking. The selected proposed Development can be viewed at the following Fairfax County DPMM - PPEA Opportunities web site:
<https://www.fairfaxcounty.gov/procurement/ppea>

R-6 In recognition of the complexity of the proposed Development of the Autumn Willow Property and the need to commence certain design and zoning related work promptly in order to meet the March 2021 deadline established by the Virginia Housing and Development Authority for low-income housing tax credit application submission, the Parties wish to begin the process for zoning and land use approvals prior to execution of a final agreement for the proposed Development.

R-7 Notwithstanding that the Parties do not have a final agreement regarding the Development and with full recognition that the Parties may be unsuccessful in concluding a final agreement regarding the Development, the FCRHA has agreed to allow the Developer the right, at the Developer's sole risk and expense, to access the Autumn Willow Property and to pursue the Land Use Entitlement Approvals (as defined herein) with respect to Autumn Willow property and the Development in accordance with the terms hereof.

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

1. Term of Agreement. This Agreement will commence on the Effective Date and, unless otherwise terminated in accordance with the terms of Section 4 below, will terminate upon the execution by the Parties hereto of a comprehensive agreement for the Development ("**Comprehensive Agreement**") in accordance with the terms of the PPEA.
2. Designation of the Developer as Agent.
 - a. The FCRHA hereby designates the Developer as its agent for the limited purpose of pursuing the Land Use Entitlement Approvals with respect to Autumn Willow Property and the Development, subject to the terms and conditions set forth in this Agreement, and the Developer hereby accepts such designation.
 - b. The FCRHA agrees that the Developer, as the FCRHA's agent, is authorized to commence land use planning, design, and other work activities necessary to file a Special Exception application with respect to Autumn Willow property and the Development (the "**Land Use Entitlement Approvals**"):
 - c. The Developer hereby acknowledges and agrees that the agency created hereby is temporary and will immediately terminate upon any termination of this Agreement in accordance with the terms of Section 4 below. Upon such termination of the agency created hereby, the Developer will immediately cease all work with respect to the Land Use Entitlement Approvals and, thereafter, the Developer will have no further duty,

obligation, or right to pursue the Land Use Entitlement Approvals on behalf of the County.

3. Agreement Regarding Land Use Entitlement Approval Process.

a. The Developer will consult and coordinate with the County appointed PPEA review and negotiation team (the “**PPEA Team**”) regarding the design of the Development and regarding all submissions to be made in connection with the Land Use Entitlement Approvals. Unless otherwise waived or modified in writing by the FCRHA, or its designee, the Developer will provide the PPEA Team a copy of all submissions to be made in connection with the Land Use Entitlement Approvals for the PPEA Team’s review and approval ten (10) business days prior to the Developer anticipated filing with or submission of the same to the applicable governmental agencies. Approval of such submission will be in the PPEA Team’s sole discretion; provided, however, that the PPEA Team’s approval of any and all such submissions will not be unreasonably withheld on the basis of County comments that do not reasonably reflect refinement of the scope and substance of prior approved submissions. If the PPEA Team fails to notify the Developer in writing of either its approval or disapproval of any such submissions within ten (10) business days after its receipt of the request from the Developer, then the Developer may proceed with the submission; however, such submission will not be deemed to be approved by the PPEA Team. Any PPEA Team approval of submissions by the Developer will be in the PPEA Team’s capacity as an advisory body to the FCRHA as land owner, and will not be construed to imply approval by the Fairfax County, nor will it be construed as requiring any future approvals by the FCRHA.

b. The FCRHA will reasonably cooperate with the Developer in the pursuit of the Land Use Entitlement Approvals.

c. It is further acknowledged and understood that the special exception will require the execution of proffered conditions and concurrence with development conditions by the Developer and FCRHA. The Developer and the FCRHA will consult and coordinate as to the substance of such proffered conditions and development conditions. The FCRHA’s approval and execution of proffered conditions will be in the FCRHA’s sole and absolute discretion; provided, however, that such approval and execution will not be unreasonably withheld with respect to proffered conditions that are reasonably related to elements of Land Use Entitlement Approval submissions previously approved by the FCRHA and provided further that the Developer will be solely responsible for all compliance with such proffered conditions if it proceeds with the Development.

d. In performing its obligations hereunder, the Developer will at all times comply with, and cause its submissions in connection with the Land Use Entitlement Approvals to comply with Fairfax County requirements in its governmental and regulatory capacity and the requirements of this Agreement.

e. The Developer will be responsible for all costs associated with the Land Use Entitlement Approvals and the FCRHA will not be obligated to reimburse the Developer for any costs associated with the Land Use Entitlement Approvals. Upon any termination of this Agreement pursuant to Section 4, the Developer will (i) assign all of its rights and interests (if any) in and to any obtained Land Use Entitlement Approvals, and deliver originals or copies of any and all other publicly-available documents related to the same to the FCRHA, and (ii) assign to the FCRHA all of its rights and interests to, and provide and deliver to the FCRHA, any and all publicly-submitted work product produced by the Developer and its contractors and consultants associated with the Land Use Entitlement Approvals and the Development, together with any third-party consents necessary therefor (collectively, the foregoing will be referred to as the “**Work Product**”).

f. During the term of this Agreement, the Developer and its agents may access the Autumn Willow Property upon reasonable prior notice to the FCRHA for purposes of conducting engineering studies, including surveying, soil core samples, traffic counts, and otherwise as may be reasonably necessary to perform its obligations hereunder. The Developer, at its own expense, will restore to its original condition, as nearly as possible, any land that is disturbed by the Developer through any work carried out under this Agreement. The Developer will promptly clean up mud, dirt, and debris on the Autumn Willow Property. If a spill or dumping of materials occurs, the Developer will immediately clean up the materials. It is understood however that any drilling of test borings will generate spoils which may be reused to backfill the drill holes. Any equipment used, installed, or stored at the Autumn Willow Property by or on behalf of the Developer will be at the Developer’s sole risk. Any equipment left in the Autumn Willow Property overnight must be properly secured from vandalism. The Developer will be responsible for compliance with all applicable laws, regulations, and any environmental impact assessment requirements. The FCRHA will have the right to have agents of the FCRHA accompany the Developer on the Autumn Willow Property. The Developer’s access to conduct the foregoing investigations will be between the hours of 7:00 a.m. and 8:00 p.m. on weekdays and from 7:00 a.m. to 7:00 p.m. weekends and County holidays. The Developer will notify and coordinate access with Si Mohamed Ghiwane, Fairfax County Department of Housing and Community Development: 703-246-5164; Si.Ghiwane@fairfaxcounty.gov.

4. Termination.

a. The FCRHA may terminate the agency granted to the Developer, at any time and for any reason. The FCRHA will give written notice to the Developer if the FCRHA elects to terminate this Agreement whereon this Agreement will immediately terminate except for the Developer’s obligations with regard to the Work Product, as described in Section 3(e), and the indemnification set forth in Section 6.

b. If the Parties are unable to reach agreement upon the terms and conditions of the Comprehensive Agreement by 11:59 p.m. eastern time on February 28, 2021 (or such later date as may be mutually agreed upon, in writing, by the Parties), this Agreement will automatically terminate as of such date and the parties hereto will have no further rights or obligations hereunder except for the Developer's obligations with regard to the Work Product, as described in Section 3(e) and the indemnification set forth in Section 6.

c. The Developer may also terminate this Agreement at an earlier date if it reasonably determines that the Development is infeasible. Thereafter, the Parties hereto will have no further rights or obligations hereunder, except for the Developer obligations with regard to the Work Product, as described in Section 3(e) and the indemnification set forth in Section 6.

5. Insurance. the Developer will maintain a commercial general liability insurance policy insuring the FCRHA, its agents, contractors, subcontractors, and invitees against any liability arising out of the Developer's activities under this Agreement. The insurance will be maintained for personal injury and property damage liability adequate to protect the FCRHA and Fairfax County against liability for injury or death of any person in connection with the Land Use Entitlements or the use, operation and condition of the property, in an amount not less than one million dollars (\$1,000,000) per occurrence. Prior to entering the property, the Developer will provide the FCRHA a Certificate of Insurance evidencing this insurance and showing the FCRHA and Fairfax County as additional insureds.

6. Indemnification. the Developer will indemnify and save harmless the FCRHA, its officers, employees and visitors and Fairfax County, its officers, employees and visitors, from and against any claims, loss, cost, damage or liability of any kind caused by the Developer, its agents, contractors, subcontractors or invitees, in connection with the work performed under this Agreement, or failure to perform such work, including without limitation the obligations set forth in Section 3(f). This provision will survive the termination of this Agreement.

7. Miscellaneous.

a. The FCRHA and the Developer will continue to negotiate certain other documents necessary to complete the Comprehensive Agreement and to effectuate the Development.

b. This Agreement and any dispute, controversy or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than those of Virginia.

c. Should any provision of this Agreement require judicial interpretation, the Parties hereby agree and stipulate that the court interpreting or considering same will not apply the presumption that the terms hereof will be more strictly construed against a Party by reason of any rule or conclusion of law that a document should be construed more strictly against the Party who itself or through its agents prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Agreement and that each Party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.

d. This Agreement may be executed in two or more counterparts, each of which will constitute one and the same instrument. This Agreement may be executed as facsimile or .pdf originals, and each copy of this Agreement bearing the facsimile or .pdf transmitted signature of any party's authorized representative shall be deemed to be an original.

e. No person or other entity will be a third-party beneficiary of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

[SIGNATURES ON FOLLOWING PAGES]

FCRHA:

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

By: _____
Thomas E. Fleetwood, Assistant Secretary

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

DEVELOPER:

THE MICHAELS COMPANY I, LP, a Virginia limited Partnership

By: _____

Printed Name: _____

Title: _____