

**INTERIM AGREEMENT
(Oakwood Property)**

THIS INTERIM AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 2019 (the "**Effective Date**"), by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the "**FCRHA**"), and **APAH Oakwood, LLC**, a Virginia limited liability company ("**APAH**"), and together with the FCRHA, collectively, the "**Parties**").

RECITALS

R-1 The FCRHA is the fee simple owner of the property located at the intersection of South Van Dorn Street and Oakwood Road, identified by Tax Map No. 081-2 ((1)) Parcel 0017C and Tax Map Nos. 081-4 ((1)) Parcels 0032, 0033 and 0034 (collectively, the "**Oakwood Property**").

R-2 In February 2018, the Purchasing Agent of the Fairfax County Department of Purchasing and Supply Management ("**Purchasing Agent**") received an unsolicited proposal from APAH under the Public Private Education Facilities and Infrastructure Act of 2002, as amended, Virginia Code Ann. §§ 56-575.1 to 575.16 (such law, the "**PPEA**") proposing to construct affordable senior housing on the Oakwood Property.

R-3 A review team of County employees was appointed by the Purchasing Agent to initially evaluate the unsolicited proposal and the team accepted the APAH's unsolicited proposal for further evaluation.

R-4 In accordance with the PPEA and the FCRHA PPEA guidelines, the Purchasing Agent issued a "Request for Competing Proposals" in June 2018 (the "**RCP**"). The RCP included the following evaluation criteria: Affordability, Financial viability, Development team experience, Project design, and Community outreach.

R-5 The County review team has evaluated all of the unsolicited proposals and upon completion of this evaluation, APAH's proposal was ranked top proposal. The review team recommended to the FCRHA that the County negotiators should commence negotiations with APAH for development of Oakwood Property.

R-6 The proposed development (the "**Development**") is anticipated to provide for construction of approximately 150 affordable senior housing units in one building with surface parking. The selected proposed Development can be viewed at the following Fairfax County DPSM - PPEA Opportunities web site:
<https://www.fairfaxcounty.gov/procurement/ppea>

R-7 In recognition of the complexity of the proposed Development of the Oakwood Property and the need to commence certain design and zoning related work promptly in order to meet the requirements established by the Virginia Housing and Development Authority for low-income housing tax credit, 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-8 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 APAH the right, at APAH's sole risk and expense, to access the Oakwood Property and to pursue the Land Use Entitlement Approvals (as defined herein) with respect to Oakwood 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 shall commence on the Effective Date and, unless otherwise terminated in accordance with the terms of Section 4 below, shall terminate upon the execution by the Parties hereto of the Comprehensive Agreement (as defined below).
2. Designation of APAH as Agent.
 - a. The FCRHA hereby designates APAH as its agent for the limited purpose of pursuing the Land Use Entitlement Approvals with respect to Oakwood Property and the Development, subject to the terms and conditions set forth in this Agreement, and APAH hereby accepts such designation.
 - b. The FCRHA agrees that APAH, as the FCRHA's agent, is authorized to commence land use planning, design, and other work activities necessary to obtain the following with respect to Oakwood property and the Development (collectively, the "**Land Use Entitlement Approvals**"):
 - i. An amendment to the Comprehensive Land Use Plan;
 - ii. A Rezoning, Proffer Condition Amendment, Special Exception, Conceptual Development Plan, General Development Plan, Final Development Plan and Site Plan; and
 - iii. Any other approvals necessary in connection with (i) through (ii) above.

c. APAH hereby acknowledges and agrees that the agency created hereby is temporary and shall 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, APAH shall immediately cease all work with respect to the Land Use Entitlement Approvals and, thereafter, APAH shall have no further duty or obligation to pursue the Land Use Entitlement Approvals on behalf of the County.

3. Agreement Regarding Land Use Entitlement Approval Process.

a. APAH shall consult and coordinate with the County/FCRHA 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, APAH shall 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 APAH anticipated filing with or submission of the same to the applicable governmental agencies. Approval of such submission shall be in the PPEA Team’s sole discretion; provided, however, that the PPEA Team’s approval of any and all such submissions shall 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, unless such comments are in response to issues or questions raised by the County; in its governmental/regulatory capacity, as part of the Land Use Entitlement Approval process. If the PPEA Team fails to notify APAH in writing of either its approval or disapproval of any such submissions within ten (10) business days after its receipt of the same from APAH, then APAH may proceed with the submission of the same; however, such submission shall not be deemed to be approved by the PPEA Team. Any PPEA Team approval of submissions by APAH shall be in the PPEA Team’s capacity as an advisory body to the FCRHA as land owner, and shall not be construed to imply approval by the Fairfax County, nor shall it be construed as requiring any future approvals by the FCRHA.

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

c. It is further acknowledged and understood that the rezoning or proffer condition amendment of the Oakwood property will require execution of proffered conditions by APAH and the FCRHA and that the special exception will require concurrence with development conditions by APAH and FCRHA. APAH and the FCRHA shall consult and coordinate as to the substance of such proffered conditions and development conditions. The FCRHA's approval and execution of proffered conditions shall be in the FCRHA's sole and absolute discretion; provided, however, that such approval and execution shall 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 APAH shall be solely responsible for all compliance with such proffered conditions if it proceeds with the Development.

d. In performing its obligations hereunder, APAH shall 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. APAH shall be responsible for all costs associated with the Land Use Entitlement Approvals and the FCRHA shall not be obligated to reimburse APAH for any costs associated with the Land Use Entitlement Approvals. Upon any termination of this Agreement pursuant to Section 4, APAH shall (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 APAH 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 shall be referred to as the **"Work Product"**).

f. During the term of this Agreement, APAH and its agents may access the Oakwood 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. APAH, at its own expense, shall restore to its original condition, as nearly as possible, any land that is disturbed by APAH through any work carried out under this Agreement. APAH shall promptly clean up mud, dirt and debris on the Oakwood Property. If a spill or dumping of materials occurs, APAH 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 Oakwood Property by or on behalf of APAH shall be at APAH's sole risk. Any equipment left in the Oakwood Property overnight must be properly secured from vandalism. APAH shall be responsible for compliance with all applicable laws, regulations, and any environmental impact assessment requirements. The FCRHA shall have the right to have agents of the FCRHA accompany APAH on the Oakwood Property. APAH's access to conduct the foregoing investigations shall 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. APAH shall notify and coordinate access with Tony Esse, Fairfax County Department of Housing and Community Development: 703-246-5172; Tony.Esse@fairfaxcounty.gov.

4. Termination.

a. The FCRHA may terminate the agency granted to APAH, at any time and for any reason. The FCRHA will give written notice to APAH if the FCRHA elects to terminate this Agreement whereon this Agreement will immediately terminate except for the APAH'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 July 31, 2022 (or such later date as may be mutually agreed upon, in writing, by the Parties), this Agreement shall automatically terminate as of such date and the parties hereto shall have no further rights or obligations hereunder except for the APAH's obligations with regard to the Work Product, as described in Section 3(e) and the indemnification set forth in Section 6.

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

5. Insurance. APAH shall maintain a commercial general liability insurance policy insuring the FCRHA, its agents, contractors, subcontractors and invitees against any liability arising out of APAH'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, APAH shall provide the FCRHA a Certificate of Insurance evidencing this insurance and showing the FCRHA and Fairfax County as additional insureds.

6. Indemnification. APAH 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 APAH, 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 shall survive the termination of this Agreement.

7. Miscellaneous.

- a. The FCRHA and APAH shall 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 shall not apply the presumption that the terms hereof shall 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 shall constitute one and the same instrument.
- e. No person or other entity shall 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 PAGE

FCRHA:

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

By: _____

Title: _____

APAH Oakwood, LLC, a Virginia limited liability
company

By: _____

Title: _____