

INTERIM AGREEMENT
(Fair Ridge at West Ox Residences)

THIS INTERIM AGREEMENT (this “**Agreement**”) is made and entered into as of the ___ day of _____, 2021 (the “**Effective Date**”), by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **CORNERSTONES HOUSING CORPORATION**, a Virginia corporation (the “**Developer**,” and together with the FCRHA, collectively, the “**Parties**”).

RECITALS

R-1. The FCRHA is the fee simple owner of a certain 1.12-acre property located near the intersection of Lee-Jackson Memorial Highway (Route 50) and Fair Ridge Drive, in the Sully Magisterial District, comprised of two parcels identified as Fairfax County Tax Map 46-3 ((1)), parcels 8 and 9B and being further described on Exhibit A attached hereto and made a part hereof (the “**Property**”).

R-2. In December 2020, the Fairfax County Department of Procurement and Material Management (“**Purchasing Agent**”) received an unsolicited proposal from Developer and its affiliate, Cornerstones, Inc., to develop the property as affordable housing 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**”).

R-3. In June 2020, the Purchasing Agent issued a Request for Competing Proposals (“**RFP**”) to solicit competing offers to develop affordable housing on the Property. The RFP specified that proposals would be evaluated on criteria such as financial feasibility, design, experience, affordability, community outreach, ability to meet FCRHA goals, and commitment to use FCRHA bond financing.

R-4. No competing proposals were received. The review team recommended to the FCRHA that it should commence negotiations with the Developer for the development of the Property.

R-5. Developer’s proposed development (the “**Project**”) is anticipated to provide for construction of approximately 34 independent housing units for very low income persons in one building with surface parking. The Developer’s submission can be viewed at the following Fairfax County web site: <https://www.fairfaxcounty.gov/procurement/ppea>.

R-6. In recognition of the complexity of the proposed Project at the Property and the need to commence certain design and zoning related work promptly in order to meet the March 2023 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 Project.

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 Property and to pursue the Land Use Approvals (as defined herein) with respect to the Property and the Project 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 Approvals with respect to the Property and the Project, 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 pursue a Comprehensive Plan amendment and to file a rezoning application, as well as such other land use applications as the Parties mutually deem appropriate, with respect to the Property and the Project (the "**Land Use 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 Approvals and, thereafter, the Developer will have no further duty, obligation, or right to pursue the Land Use Approvals on behalf of the County.

3. Agreement Regarding Land Use Approval Process.

a. The Developer will consult and coordinate with the FCRHA designated PPEA review and negotiation team (the "**PPEA Team**") regarding the design of the Project and regarding all submissions to be made in connection with the Land Use 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 Approvals for the PPEA Team's review and approval a minimum of ten (10) business days prior to the Developer's anticipated filing with or submission of the same to the applicable

governmental agencies. Approval of such submission will be in the PPEA Team's reasonable 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 Approvals.

c. It is further acknowledged and understood that the Land Use Approvals 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 reasonable discretion; provided, that the Developer will be solely responsible for all compliance with such proffered conditions if it proceeds with the Project.

d. In performing its obligations hereunder, the Developer will at all times comply with, and cause its submissions in connection with the Land Use 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 Approvals and the FCRHA will not be obligated to reimburse the Developer for any costs associated with the Land Use 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 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 Approvals and the Project, 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 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 Property resulting from the Developer's activities. 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 Property by or on behalf of the Developer will be at the Developer's sole risk. Any equipment left on the 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 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 Anwar Iqbal, Fairfax County Department of Housing and Community Development: 703-246-5017; anwar.iqbal@fairfaxcounty.gov. If the FCRHA and the Developer have entered into an earlier agreement regarding Developer's ability to access the Property, then such earlier agreement is incorporated into this Agreement by reference, except to the extent as may be modified by this Agreement.

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, 2023 (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 Project 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 Approvals 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, damages, 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 Project.

b. An “**Assignment**” shall mean (i) any assignment, in whole or in part, by Developer of its right or interest in this Agreement, or (ii) any direct or indirect change in control of Developer, in both cases whether voluntary, by operation of law, or otherwise. An Assignment will be void without the prior written consent of the FCRHA, which it may grant in its sole discretion. Notwithstanding the foregoing, the FCRHA will not unreasonably withhold its consent to an Assignment to an affiliate of Developer.

c. 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.

d. 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.

e. 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.

f. No person or other entity will be a third-party beneficiary of this Agreement, except Fairfax County and its officers, employees, agents, and visitors.

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:

CORNERSTONES HOUSING CORPORATION, a
Virginia corporation

By: _____

Printed Name: _____

Title: _____

EXHIBIT A – PROPERTY DESCRIPTION

Two parcels of real property situated in Fairfax County and being described as follows:

Parcel 9B

Beginning at an iron rod found on the northern right-of-way line of Lee Jackson Memorial Highway Route 50 West Bound, said point being the southeast corner of the property now or formerly of SNH Medical Office Properties Trust;

thence with the eastern and southern line of said property now or formerly of SNH Medical Office Properties Trust the following two (2) courses;

N 18°41'51" E, 200.36' to an iron rod found and
S 72°06'08" E, 271.69'

to an iron pipe found marking the southern line of the property of The Board of Supervisors of Fairfax County, Virginia;

thence with said southern line of the property of The Board of Supervisors of Fairfax County, Virginia

S 00°50'51" E, 3.99'

to an iron pipe found on the northern right-of-way of South Bound Ramp of West Ox Road onto aforementioned Lee Jackson Memorial Highway-Route 50 West Bound;

thence with said northern right-of-way of said South Bound Ramp of West Ox Road onto aforementioned Lee Jackson Memorial Highway- Route 50 West Bound and continuing with said northern right-of-way of said Lee Jackson Memorial Highway-Route 50 West Bound the following five (5) courses:

S 33°59'50 W, 80.95' to an iron rod found,
S 42°58'24" W, 43.39' to an iron pipe found,
S 61°12'59" W, 86.39' to an iron pipe found,
S 87°27'28" W, 85.85' to an iron pipe found and
N 64°07'18" W, 96.15'

to the point of beginning containing 47,258 square feet or 1.08489 acres of land.

AND

Parcel 8

Beginning at an iron rod found on the northern right-of-way of South Bound Ramp of West Ox Road onto Lee Jackson Memorial Highway-Route 50 West Bound, said point being on the

southern line of the property now or formerly of SNH Medical Office Properties Trust;

thence with said northern right-of-way of South Bound Ramp of West Ox Road onto
aforementioned Lee Jackson Memorial Highway- Route 50 West Bound:

S 38°21'39" W, 87.77'

to an iron pipe found on the eastern line of the property of The Board of Supervisors of Fairfax
County, Virginia;

N 00°50'51" W, 3.99'

to an iron pipe found on the southern line of aforementioned property now or formerly of SNH
Medical Office Properties Trust;

thence with said southern lines of the property now or formerly of SNH Medical Office
Properties Trust the following two (2) courses:

N 07°28'42" E, 71.70' to an iron pipe found and
S 82°07'26" E, 45.63'

to the point of beginning containing 1,746 square feet or 0.04008 acres of land.