

**CONTRACT TO GROUND LEASE**  
(Autumn Willow 9% Project)

This Contract to Ground Lease (the “**Agreement**”) is made and entered into as of \_\_\_\_\_, 2021 (the “**Effective Date**”) by and between the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**FCRHA**”), and **Autumn Willow 9, LLC**, a Virginia limited liability company, (together with any assignee permitted under this Agreement, “**AW9**”), 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. Pursuant to 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**”) and FCRHA’s PPEA guidelines, FCRHA evaluated proposals and selected The Michaels Development Company I, L.P. (the “**Developer**”) to develop and construct approximately 150 affordable senior housing units on the Autumn Willow Property with surface parking (the “**Development**”). The Development is anticipated to consist of two separate projects, with one project receiving nine percent (9%) low-income housing tax credits and other sources (“**9% Project**”) to be owned and operated by AW9 and the other receiving four percent (4%) low-income housing tax credits and other sources (the “**4% Project**”) to be owned and operated by Autumn Willow 4, LLC, a Virginia limited liability company (“**AW4**”).
- R-3. FCRHA and the Developer entered into that certain Interim Agreement (the “**Interim Agreement**”) dated July 31, 2020 to promptly commence certain design and zoning related work and other due diligence on the Autumn Willow Property.
- R-4. In order to meet the requirements established by the Virginia Housing (“**VH**”) for nine percent (9%) low-income housing tax credits (the “**Tax Credits**”), the FCRHA is entering into this and into that certain Option to Lease that is by and between the FCRHA and AW9 and of even date herewith (“**9% Option**”).
- R-5. Simultaneously with the execution of this Agreement, the FCRHA and AW4 shall have entered into an additional Contract to Ground Lease which, subject to AW4 satisfying certain conditions precedent as set forth in said contract, provide that AW4 will enter into a separate ninety-nine (99) year, senior lien priority ground lease for all or a portion of the Autumn Willow Property (the “**4% Ground Lease**”) for the development, construction, use and maintenance of the 4% Project.

R-5. AW9 and FCRHA desire to enter into this Agreement setting forth AW9's contract rights and option to enter into the 9% Ground Lease for a portion of the Autumn Willow Property upon the satisfaction of certain conditions, as set forth below in this Agreement.

NOW THEREFORE for and in consideration of the mutual promises of the Parties and of other good and valuable consideration receipt and sufficiency of which are hereby acknowledged, FCRHA and AW9 intending to be legally bound do hereby agree as follows:

#### Section 1. **GRANT OF OPTION.**

1.1 Property. FCRHA hereby and pursuant to the Option to Lease (defined herein) grants to AW9 an option to lease a portion of the Autumn Willow Property, subject to all of the terms and conditions of this Agreement. The term "**Property**" means that portion of the Autumn Willow Property and includes: (a) the real property (the "**Land**") more particularly described in *Exhibit A* of the 9% Ground Lease, which is attached as Exhibit A-1 to this Agreement, and made a part hereof; (b) all of its interest in certain easements, development rights, improvements, equipment and fixtures located on the Land at the time of the Closing (as defined in Section 8.1 below); (c) the Land Use Entitlement Approvals, certain appurtenant easements, and the FCRHA's rights and interests to certain Transferrable Development Rights, as defined herein, from that land identified by Tax Map No. 55-3((1)) Parcel 26A and more particularly described at Exhibit A-2 attached hereto; and (d) other intangible property associated with the Land or the improvements, equipment and fixtures located thereon owned by FCRHA.

1.2 Option. The option described in Section 1.1 is referred to in this Agreement as the "**Option.**"

1.3 Recordation of this Agreement. This Agreement, and the Option created hereby, may be recorded by AW9 in the Land Records of Fairfax County, Virginia (the "**Land Records**"). If this Agreement is recorded and later expires or is terminated as provided herein, then no later than five Business Days after the expiration or termination hereof, AW9 will deliver to FCRHA for recordation, duly signed and notarized by AW9, documents sufficient to confirm the expiration or termination of this Agreement and the termination of the Option, and otherwise in recordable form and reasonably acceptable to FCRHA (and this obligation of AW9 will survive expiration or termination of this Agreement). If AW9 records this Agreement in the Land Records, AW9 will be responsible for payment of all fees and taxes associated with such recording. The relationship between FCRHA and AW9 shall be governed by the provisions of this Agreement.

1.4 Effect of Agreement; Interest in Real Property. The Parties intend that this Agreement is given by FCRHA to AW9 as an option to lease a portion of the Autumn Property. The Parties intend that this Agreement creates a valid and present encumbrance on the Property in favor of AW9, effective as of the Effective Date, subject to any and all liens or encumbrances disclosed in the Land Records. Therefore, the Option will be deemed an encumbrance upon the Property during the term of this Agreement effective as of the Effective Date and will be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns (subject to Section 12.7 below).

## Section 2. **INDEPENDENT CONSIDERATION.**

In consideration of and concurrently with FCRHA entering into this Agreement, AW9 agrees to pay to FCRHA the sum of Ten Dollars (\$10.00) as “independent consideration” for the Option (the “**Consideration**”). The Consideration has been bargained for and agreed to as separate and independent consideration for AW9’s option to lease the Property pursuant to the terms herein, and for FCRHA’s execution and delivery of this Agreement. The Consideration will be deemed fully earned by FCRHA upon receipt and will be considered non-refundable to AW9.

## Section 3. **TERM; EXTENSION OF OPTION; EXERCISE OF OPTION.**

3.1 Term of Agreement. The term of this Agreement (the “**Term**”) begins on the Effective Date and will expire at 5:00 p.m. on the Expiration Date (defined herein), unless an Option Notice (defined below) has been sent to FCRHA by AW9 and an Approval Notice (defined below) has been sent to AW9 by FCRHA, in which case the Term will expire on the Closing Date (defined below). The initial Expiration Date will be December 1, 2021 (the “**Initial Expiration Date**”). The Initial Expiration Date, as may be extended by mutual agreement in writing by the Parties or as specifically provided in this Section 3.1 below is the “**Expiration Date.**”

(a) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Initial Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Initial Expiration Date, AW9 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2022 (the “**Second Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(b) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Second Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Second Expiration Date, AW9 will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2023 (the “**Third Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(c) If (i) AW9 has not received an award of Tax Credits and has not sent an Option Notice on or before the Third Expiration Date, (ii) this Agreement is then in full force and effect and AW9 is not then in default beyond any applicable notice and cure period under this Agreement, and (iii) AW9 has given FCRHA notice in writing of AW9’s election to extend the Term of this Agreement no less than 10 Business Days before the Third Expiration Date, APAH will have the right to extend the Term of this Agreement until 5:00 p.m. on December 1, 2024 (the “**Outside Expiration Date**”); provided, however, that AW9 will re-apply for the Tax Credits and equity and financing as required pursuant to Section 9.3.

(d) Notwithstanding anything to the contrary contained in this Agreement, in no event will the Expiration Date be extended to a date beyond the Outside Expiration Date, except by a mutual agreement in writing executed by both Parties. If AW9 has not exercised its right to extend the Expiration Date as expressly provided above, AW9 will be deemed to have forever waived its right to further extend the Term of this Agreement beyond the then current Expiration Date, except by mutual agreement in writing executed by both Parties.

3.2 Condition to Right to Exercise. AW9 may exercise the Option only if all of the following conditions have been met: (i) AW9 has received an award of Tax Credits from VH for the Development; and (ii) in connection with the entitlement and development of the Development, AW9 has received an approved Special Exception for the Property.

3.3 Exercise Notice. AW9 may exercise the Option at any time during the Term, provided AW9 has satisfied the conditions set forth in Section 3.2 above, by delivering a written notice to FCRHA (the “**Option Notice**”). The Option Notice will include: (i) a certification from AW9 that AW9 has satisfied the conditions precedent set forth in Section 3.2; and (ii) reasonably detailed supporting documentation of the satisfaction of such conditions (the “**Supporting Documentation**”). Upon FCRHA’s receipt of the Option Notice, FCRHA will have 20 Business Days to review the Supporting Documentation, and within such period FCRHA will deliver a written notice to AW9 either approving of the Supporting Documentation (the “**Approval Notice**”), or disapproving of all, or a portion, of the Supporting Documentation. If FCRHA sends an Approval Notice, then the Parties will continue to proceed to the Closing in accordance with this Agreement. If FCRHA disapproves all, or a portion of, the Supporting Documentation, then FCRHA’s written notice (the “**Disapproval Notice**”) will set forth, in detail, each and every one of FCRHA’s objections to the Supporting Documentation, and any such additional information required by FCRHA to approve the Supporting Documentation. Thereafter, within 15 Business Days following AW9’s receipt of the Disapproval Notice, AW9 will submit such additional information, or other documentation, requested by FCRHA in the Disapproval Notice. The process for FCRHA’s review and approval of the Supporting Documentation will continue until FCRHA has approved the Supporting Documentation, and FCRHA will have no obligation to execute the 9% Ground Lease until AW9 has obtained an Approval Notice from FCRHA, provided FCRHA will not unreasonably withhold, delay, or condition the approval of the Supporting Documentation.

3.4 Failure to Exercise. If AW9 fails to deliver the Option Notice or fails to deliver the Supporting Documentation by the Expiration Date, then (a) this Agreement will immediately terminate without further action of the Parties; (b) AW9 will promptly deliver to FCRHA such documentation (fully executed and acknowledged) reasonably requested by FCRHA to evidence termination of this Agreement; and (c) the Parties will have no further obligations to each other except as otherwise specifically provided in this Agreement. This Section 3.4 is not intended to and does not in any way limit or affect any of the rights or remedies available to any Party if the other Party defaults in the due and timely performance of any of its obligations, or is in breach of any of its representations and warranties, under this Agreement.

#### Section 4. **TERMS OF LEASE.**

At the Closing, FCRHA and AW9 will enter into the 9% Ground Lease, which will be substantially in the form of Exhibit B attached hereto and made a part hereof by this reference (except: (i) to the extent such terms and conditions are no longer applicable or are otherwise invalid or unenforceable under Virginia laws as of the Closing Date (as defined in Section 8.1 below); or (ii) as otherwise mutually agreed to by FCRHA and AW9, including without limitation any requirements of the tax credit investor or secured lenders that FCRHA deems acceptable). Promptly after delivery of the Option Notice, to the extent necessary, the Parties will meet in good faith to determine if any modifications are necessary to the proposed 9% Ground Lease to reflect either any new, or otherwise unanticipated, circumstances regarding the Property, financing of the 9% Project, investor requirements or any changes in Virginia law that make any term or provision of the proposed 9% Ground Lease invalid or unenforceable.

#### Section 5. **REPRESENTATIONS AND WARRANTIES OF FCRHA.**

5.1 In General. With the exception of those representations and warranties stated in Section 5.2, AW9 has not relied and will not rely upon any representations or warranties, express or implied, affirmative or negative, concerning the Property made by FCRHA or any of FCRHA's agents or employees.

5.2 Representations and Warranties of FCRHA. FCRHA represents and warrants that the following facts and circumstances are true and correct as of the Effective Date and as of the Closing:

(a) Authority, Authorizations and Consents. FCRHA is a political subdivision of the Commonwealth of Virginia. FCRHA has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement has been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of FCRHA, enforceable in accordance with its respective terms. FCRHA has obtained all authorizations, consents or approvals of any governmental entity or other person or entity required to be obtained or given in connection with the execution and delivery of this Agreement by FCRHA or the performance of any of FCRHA's obligations hereunder.

(b) No Violation. The execution and delivery of this Agreement by FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of FCRHA's obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Options; Leases. No person or entity other than AW9 holds or will hold any option or other right to lease or purchase all or any part of any of the Property or any interest in the Property.

(d) No Pending Actions. To FCRHA's knowledge; (i) there are no actions, suits, proceedings (including any arbitration proceedings, condemnation, expropriation or other proceeding in eminent domain, or environmental, zoning or other land use regulation proceedings), orders, investigations or claims that are pending against or relating to the Property or the FCRHA's rights therein; and (ii) there are no proceedings threatened or planned to be instituted by or against or relating to the Property.

(e) Compliance with Laws. FCRHA has not received any written notice from any governmental entity asserting that the Property (or FCRHA with respect to the Property) is in violation of any Laws. "Law" and "Laws" means, with respect to any person or entity, any U.S. federal, state or local, and any foreign national, state or local, law, statute, common law, ordinance, code, treaty, rule, regulation, order, ordinance, permit, license, writ, injunction, directive, determination, judgment or decree or other requirement of any governmental entity, in each case, applicable to or binding upon such person or entity or any of its property or to which such person or entity or any of its property is subject.

Notwithstanding the representations in Section 5.2(b), Section 5.2(d) and Section 5.2(e), if circumstances occur that make the representations therein untrue or incorrect at any time after the Effective Date, FCRHA will provide AW9 notice required in Section 5.4, and FCRHA will use reasonable efforts to make such representations true and correct as of the Closing, but will otherwise have no liability for such representations being untrue or incorrect, unless the failure of the representations to be true and correct were directly related to the actions or omissions of FCRHA in breach of this Agreement. The provisions of this paragraph will not limit AW9's right to terminate this Agreement as provided in Section 9.4.

5.3 Representations and Warranties of AW9. AW9 represents and warrants that the following facts and circumstances are true and correct as of the Effective Date. In the event that any of the following representations and warranties are not true and correct as of the date AW9 delivers the Option Notice to FCRHA, AW9 will use reasonable efforts to cause such representations and warranties to be true and correct as of the Closing Date.

(a) Authority, Authorizations and Consents. AW9 is a Virginia limited liability company. AW9 has all necessary power and authority to enter into this Agreement and to perform its obligations hereunder. The execution, delivery and performance of this Agreement by AW9 have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of AW9 in order to consummate the transactions contemplated herein. This Agreement is a legal, valid, and binding obligation of AW9, enforceable in accordance with its respective terms. No authorization, consent or approval of, or notice to, any governmental entity or other person or entity is required to be obtained or given in connection with the execution and delivery of this Agreement by AW9 or the performance of any of AW9's obligations hereunder. In the event that AW9 assigns this Agreement (in accordance with its terms) to another entity, such entity will make the same (but corrected, as necessary) representations set forth in this Section 5.3(a) as of the Closing Date.

(b) No Violation. The execution and delivery of this Agreement by AW9, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of AW9's

obligations under, any contract to which it is a party or by which it is bound, or (ii) violate (and none of such obligations will be void or voidable under) any law, regulation, order, arbitration award, judgment or decree to which it is a party or to which it is subject.

(c) Litigation and Claims. To AW9's knowledge, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or threatened against AW9 which could affect any of the transactions contemplated by this Agreement.

5.4 Inaccuracies. In the event that either Party becomes aware of facts or circumstances after the Effective Date that might result in any of that Party's representations or warranties set forth in Section 5.2 or Section 5.3 not being true as of the Closing, such Party will give prompt written notice to the other Party of such facts or circumstances.

## Section 6. **PROPERTY CONDITION; RIGHT OF ENTRY; TITLE.**

6.1 Property Condition. AW9 acknowledges that except to the extent of any express representations and warranties set forth in Section 5.2, FCRHA has made no representations or warranties, express or implied, regarding the Property or matters affecting the Property, whether made by FCRHA, or on FCRHA's behalf or otherwise, and that except as otherwise provided in this Agreement, the leasehold interest in the Property will be conveyed subject to, and in accordance with, the terms and conditions of the 9% Ground Lease. For the avoidance of doubt, AW9 will accept possession of the Property on the commencement date of the 9% Ground Lease "AS IS, WHERE IS, WITH ALL FAULTS", subject to the Permitted Exceptions.

6.2 Right of Entry. During the Term, AW9 will have reasonable rights of access to the Property to the extent set forth in this Section 6.2 for the purposes of surveying the Property and performing design and engineering analysis including environmental tests and studies and soils borings and tests, provided that neither AW9 nor its contractors will unreasonably disrupt the normal operation of the Property. AW9's access hereunder will be in compliance with all applicable statutes, laws, rules, regulations, ordinances, and orders of any governmental or quasi-governmental authority having jurisdiction over the Property and AW9's or its contractors' activities thereon. All such entry will be coordinated in advance with appropriate representatives of FCRHA; for purposes of this Section 6.2, unless AW9 is otherwise notified by FCRHA, the appropriate representatives will be Kevin (Casey) Sheehan at 703-246-5146, [kevin.sheehan@fairfaxcounty.gov](mailto:kevin.sheehan@fairfaxcounty.gov), and Regina Gerner at 703-246-5229, [regina.gerner@fairfaxcounty.gov](mailto:regina.gerner@fairfaxcounty.gov). Prior to AW9 entering the Property, AW9 (or its contractor) will obtain and maintain, at AW9's (or its contractor's, as the case may be) sole cost and expense, the following insurance coverage, and will cause each of its agents and contractors to obtain and maintain, and, upon request of FCRHA, will deliver to FCRHA evidence of (i) general liability insurance, from an insurer reasonably acceptable to FCRHA, in the amount of \$1,000,000.00 combined single limit for personal injury and property damage per occurrence, (ii) workers' compensation insurance at statutory limits, (iii) employer's liability insurance in an amount not less than \$1,000,000.00, and (iii) professional liability insurance of not less than \$1,000,000.00 for any access to conduct environmental tests and studies and/or soil borings and tests. AW9 will provide FCRHA with original certificates of insurance for the coverage required above not less

than five Business Days prior to any access, naming FCRHA and such other parties designated by FCRHA as additional insureds and otherwise in form reasonably satisfactory to FCRHA. FCRHA will have the right, in its discretion, to accompany AW9 and its contractors. All damage to the Property resulting from any access by or at the direction of AW9 or its contractors will be repaired immediately by AW9, at its sole cost and expense, so that the Property will be restored to the same condition in which it existed immediately prior to such access. AW9 will indemnify, defend and save FCRHA and its respective Commissioners, agents, directors, officers and employees (collectively, the “**Indemnitees**”) harmless from and against any and all losses, liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (including, without limitation, engineers’, architects’ and attorneys’ fees and disbursements), which may be suffered by, imposed upon or incurred by or asserted against FCRHA or any of the Indemnitees as a result of any access pursuant to this Section 6.2. The provisions of this Section 6.2 will survive Closing or any termination of this Agreement.

6.3 Title. Prior to the Effective Date, AW9 ordered from Stewart Title and Escrow, Inc. (“**Title Company**”), a Commitment for Title Insurance Policy (the “**Title Commitment**”) insuring AW9’s interest in the Property, and requested copies of any recorded instruments that affect the title to the Property or would be applicable to AW9’s leasehold estate therein under the 9% Ground Lease. Items affecting FCRHA’s title to the Property as shown in the Title Commitment or survey on which AW9’s title review was based will be the “**Permitted Exceptions**” for purposes of this Agreement and the 9% Ground Lease, as applicable. Notwithstanding the foregoing, FCRHA agrees to take the following actions to be completed on or before Closing with respect to the Property:

(a) FCRHA will be obligated at Closing to remove any and all existing mortgage liens or similar liens or encumbrances against the Property. FCRHA hereby represents to AW9 that the mortgages which currently affect the Property, if any, can and will be released as aforesaid prior to the Closing;

(b) FCRHA will be obligated at Closing to deliver such title affidavits or similar materials as are customary for the issuance of title insurance for conveyance of leasehold estates (a “**Title Policy**”), as applicable, and which are reasonably consistent with the forms of such documents typically executed by FCRHA;

(c) From the Effective Date until the Closing, without the prior written consent of AW9, FCRHA will not voluntarily place or cause a lien to be placed on the Property or encumber or convey the Property or any portion thereof or any interest therein, nor amend or modify any existing encumbrances in any manner which will materially adversely affect the Property or any portion thereof or impose any material obligation with respect thereto. For purposes hereof, an encumbrance or obligation will be deemed to “materially adversely affect the Property or any portion thereof” or impose a “material obligation” if (1) the cost associated therewith on a stand-alone basis or aggregated with any other new or modified encumbrances or obligations subject to the provisions of this subsection (c) is greater than Twenty-Five Thousand Dollars, or (2) impacts the design, construction, configuration, square footage, or parking of the proposed Development. FCRHA will comply with all terms of any mortgage, encumbrance, or other agreements affecting the Property or any portion thereof and will not permit a default thereunder to exist or occur so long as this Agreement is in effect. If any monetary lien or liens



against the Property that FCRHA is either obligated to remove or has agreed in writing to remove, have not been removed and satisfied prior to Closing, then at Closing, FCRHA will pay such amounts as required to fully satisfy said liens. If any new encumbrance or matter that materially adversely affects the Property appears on any updated title commitment or survey that AW9 obtains after the Effective Date, and AW9 disapproves of such encumbrance or matter, then AW9 will provide written notice to FCRHA of such disapproval. If, within 15 Business Days after receipt of such notice, FCRHA does not provide written notice to AW9 of FCRHA's plan to cure, remove or otherwise address the encumbrance or matter in a manner that is reasonably satisfactory to AW9, then AW9 will have the right to terminate this Agreement, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW9 will have any further liability hereunder.

## Section 7. **GOVERNMENTAL APPROVALS, SCHEMATICS, PLANS AND SPECIFICATIONS.**

7.1 Land Use Entitlement Approvals and Transferrable Development Rights. During the Term and in accordance with a commercially reasonable schedule, AW9 covenants and agrees, at its expense, to file such applications with applicable Governmental Authority (as defined below) that are required in connection with the land use planning, design and other work activities necessary to obtain the following with respect to the Property that are necessary to develop and construct the Development (the "**Land Use Entitlement Approvals**"): (1) a Special Exception of the Property in connection with the Development; and (2)] a Site Plan (defined below). Undefined capitalized terms in the preceding sentence have the meaning ascribed to such terms in Chapter 112 of the 1976 Code of the County of Fairfax, Virginia (the "**Zoning Ordinance**"). The Parties acknowledge that AW9 began filing applications and other work necessary to obtain the Land Use Entitlement Approvals during the period that the Interim Agreement was in effect and that certain of the Land Use Entitlement Approvals have already been obtained prior to the Term. All such Land Use Entitlement Approvals will be in form and substance satisfactory to AW9. The FCRHA has procured certain land easements and transferrable development rights from the Fairfax County Park Authority described below and related to that certain parcel of land described at Exhibit A-2.

(a) "**Governmental Authority**" will mean any of the following: the United States of America, the Commonwealth of Virginia, the County of Fairfax, Virginia, Fairfax County Department of Housing and Community Development, Fairfax County Redevelopment and Housing Authority 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.

(b) FCRHA, at no out-of-pocket cost to FCRHA, will (A) sign and join with AW9 in filing any applications, (B) cooperate with AW9 in obtaining any and all permits, regulatory agreements, consents, certificates, waivers, and other approvals relating to the Development, and (C) sign any applications made by AW9 required to obtain such permits, consents, certificates, waivers, and approvals. AW9 will reimburse FCRHA within 10 Business Days after FCRHA's demand for any reasonable third-party cost or expense incurred by FCRHA in obtaining such permits, consents, certificates, waivers, and approvals. Further, upon request, FCRHA will provide such authorization or approvals as any Governmental Authority or other third

party may require to evidence the right of AW9 to be seeking regulatory approval for its Development.

(c) FCRHA and AW9 agree that obtaining the Land Use Entitlement Approvals and completion of the Schematics, Design Development Plans (defined below), Permit Documents (defined below) and Final Plans and Specifications in accordance with the terms of this Agreement are conditions precedent to Closing under this Agreement.

(d) AW9 agrees to provide FCRHA copies of any approval requests, applications, site plans, or other submissions for Land Use Entitlement Approvals at least three Business Days prior to the submission of such documents and instruments to any Governmental Authority other than FCRHA. Additionally, AW9 will submit progress reports to FCRHA containing updates regarding the Land Use Entitlement Approvals process and preparation of the Submission Materials (defined below) at least every 60 days for FCRHA's review and approval. AW9 and FCRHA may also set up a program of periodic team conference calls to provide regular updates concerning the development and construction of the Development, and if so, FCRHA may, in its sole discretion, waive the requirement for written progress reports, provided such waiver is in writing (including email).

(e) AW9 will file its initial Site Plan for review by the appropriate Governmental Authority within 120 days of obtaining from VH its initial letter of the award of Tax Credits for the Development.

(f) AW9 will use commercially reasonable efforts to obtain all Land Use Entitlement Approvals (except for the Site Plan) on or before the Expiration Date.

(g) The Transferrable Development Rights include certain easements, interests, and rights to pursuant to the Special Exception and related zoning action is to combine subject property #0553 01 0026B with the Fairfax County Park Authority ("FCPA") property #0553 01 0026A and allow for an increase in density to allow the Development to achieve 150 units. This approach to allowable density was verified with the Fairfax County Department of Planning and Development (DPD) as appropriate. FCPA confirmed FCPA allowed its aforementioned property to be part of the rezoning application, and FCRHA will transfer the related density and development rights permitted by such zoning application and approvals under this Agreement.

7.2 Submission and Review of Submission Materials. FCRHA and AW9 acknowledge and agree that the form of the Special Exception under consideration contains a general description of the Development upon which all Land Use Entitlement Approvals and the Schematics and the Final Plans and Specifications will be based. AW9 will submit to FCRHA for its review and approval any documents, drawings, proffers and other instruments that AW9 will submit to any Governmental Authority for any Land Use Entitlement Approvals related to the Development (including any modifications to any such documents, drawings, proffers and instruments) and any other documents that FCRHA will reasonably request in connection with its review thereof. Without limiting the foregoing, AW9 will submit to FCRHA for its review and approval prior to submission to any Governmental Authority for approval of the Conceptual Development Plan or Final Development Plan or for Special Exception approval any and all information related to such submissions, including (without limitation) the proposed elevations and facades for the

Development, building layouts, site development plans and other proffered amenities related to the Development (collectively, the “**Submission Materials**”). The Submission Materials will include, without limitation: (i) Schematics; (ii) Design and Development Plans; (iii) Permit Documents; and (iv) Final Plans and Specifications. If FCRHA does not approve the Submission Materials, FCRHA will so notify AW9 in writing, specifying in what respects it disapproves of the Submission Materials. AW9 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW9 will revise the Submission Materials to reflect the agreed upon changes and will then resubmit the Submission Materials to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Submission Materials; FCRHA’s review of revisions to the Submission Materials will be carried out within five Business Days of the date of submission of the revised Submission Materials. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the Submission Materials.

(a) The following definitions are used in this Section 7.2 and elsewhere in this Agreement as they relate to Submission Materials and design, development, and construction of the Development:

(i) “**Schematics**” means the concept plans completed at approximately fifteen percent of the Final Plans and Specifications;

(ii) “**Design Development Plans**” means the plans, specifications and construction drawings completed at approximately thirty-five percent of the Final Plans and Specifications for the development and construction of the Development and the parties having determined the anticipated costs associated with the relocation, upgrade and bringing of utilities to the Property;

(iii) “**Permit Documents**” means the plans, specifications and construction drawings completed at approximately seventy-five percent of the Final Plans and Specifications for the development and construction of the Development; and

(iv) “**Final Plans and Specifications**” means one hundred percent of the final plans and specifications and construction drawings, including but not limited to the Site Plan and building plans prepared by AW9’s architect and engineers for the Development which materially conform to the Schematics and other Submission Materials previously approved by FCRHA that are necessary for the development and construction of the Development.

(b) Within 90 days after receipt of final, unappealable Final Development Plan approval for AW9’s proposed Development from each applicable Government Authority, AW9 will submit Schematics of the Development (which will include, without limitation, the site layout design of the Property) for FCRHA’s approval. If FCRHA does not approve the Schematics, FCRHA will so notify AW9 in writing, specifying in what respects it disapproves of the Schematics. AW9 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW9 will revise the Schematics to reflect the agreed upon changes and will then resubmit the Schematics to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the Schematics; FCRHA’s

review of revisions to the Schematics will be carried out within five Business Days of the date of submission of the revised Schematics. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the Schematics.

(c) Within 270 days after FCRHA has approved the Schematics, AW9 will submit completed proposed Final Plans and Specifications. FCRHA will review the proposed Final Plans and Specifications to determine whether they materially conform to the Schematics. If FCRHA determines that they do so conform, FCRHA will so notify AW9 in writing. If FCRHA reasonably determines that the proposed Final Plans and Specifications, as so revised, do not materially conform to the Schematics and other previously approved Submission Materials, FCRHA will so notify AW9, specifying in writing in what respects they do not so conform. In such latter event, AW9 and FCRHA will reasonably cooperate with one another in addressing the comments of FCRHA. AW9 will revise the proposed Final Plans and Specifications to reflect the agreed upon changes and will then resubmit the proposed Final Plans and Specifications to FCRHA for review. The initial review by FCRHA will be carried out within five Business Days of the date of submission of the proposed Final Plans and Specifications; FCRHA's review of revisions to the proposed Final Plans and Specifications will be carried out within five Business Days of the date of submission of the revised proposed Final Plans and Specifications. If FCRHA has not notified AW9 of its determination within the applicable period, FCRHA will be deemed to have approved the proposed Final Plans and Specifications or determined that they materially conform to the Schematics or other Submission Materials.

## Section 8. **CLOSING.**

8.1 Time. If, and on the express condition that, AW9 delivered the Option Notice and the Supporting Documentation prior to the Expiration Date, and FCRHA provided the Approval Notice, then on a date prior to December 31<sup>st</sup> of the year following the calendar year in which the Approval Notice was sent and after the satisfaction or waiver (if applicable) of the conditions precedent set forth in Section 9.1 and Section 9.2, the Parties will each execute and exchange original counterparts and deposit into escrow the documents described in Section 8.3 and Section 8.4 below and will close the transaction contemplated by this Agreement (the "**Closing**"). AW9 will select the date of Closing (the "**Closing Date**"), which will be a Business Day, and give notice to FCRHA at least 15 Business Days prior to the Closing Date, unless otherwise agreed in writing by the Parties.

8.2 Escrow. The Parties will conduct the Closing through the Title Company (the "**Escrow Agent**") or such other party mutually agreed between the Parties at the time of Closing. The terms of this Agreement (including, but not limited to, the terms contained in this Section 8), together with such additional instructions as the Escrow Agent will reasonably request and to which the Parties will agree, will constitute the escrow instructions to the Escrow Agent. If there is any inconsistency between this Agreement and any additional escrow instructions given to the Escrow Agent, this Agreement will control unless the intent to amend this Agreement is clearly and expressly stated in the additional escrow instructions.

8.3 FCRHA's Deposits into Escrow. FCRHA will deposit into escrow on or before Closing the following documents:

- (a) Two duly executed counterpart originals of the 9% Ground Lease;
- (b) A duly executed and acknowledged counterpart original memorandum of lease in a reasonable form that has been agreed to between FCRHA and AW9 in recordable form (the “**Memorandum of Lease**”);
- (c) A certificate of FCRHA signed by FCRHA affirming that all of FCRHA’s representations and warranties set forth in Section 5.2 are true in all material respects as of the Closing Date; provided however, to the extent FCRHA is of facts or circumstances that result in FCRHA’s representations or warranties set forth in Section 5.2 not being true as of the Closing, FCRHA will disclose such facts or circumstances in such certificate (the “**FCRHA Certificate**”);
- (d) Such additional documents, including written escrow instructions consistent with this Agreement, as are both (i) reasonably necessary for the consummation of the transactions contemplated by this Agreement and (ii) reasonably consistent with the forms of such documents typically executed by FCRHA.

8.4 AW9’s Deposits into Escrow. AW9 will deposit into escrow on or before Closing:

- (a) Two duly executed counterpart originals of the 9% Ground Lease;
- (b) A duly executed and acknowledged counterpart original of the Memorandum of Lease;
- (c) Two duly executed counterpart originals of the Guaranty (as defined in the 9% Ground Lease);
- (d) A certificate of AW9 signed by a person duly authorized to do so on behalf of AW9, affirming that all of the representations and warranties of AW9 set forth in Section 5.3 are true in all material respects as of the Closing Date; provided however, to the extent AW9 is aware of facts or circumstances that result in AW9’s representations or warranties set forth in Section 5.3 not being true as of the Closing, AW9 will disclose such facts or circumstances in such certificate (the “**AW9 Certificate**”);
- (e) Such evidence as the Escrow Agent reasonably requires as to the authority of the person or persons executing documents on behalf of AW9;
- (f) The Base Rent due at Closing, if any, in immediately available funds;
- (g) Such additional documents, including written escrow instructions consistent with this Agreement, as are reasonably necessary for the lease of the Property in accordance with the terms of this Agreement.

8.5 Closing. When the Escrow Agent has received all documents identified in Section 8.3 and Section 8.4, and has received written notification from AW9 and FCRHA that all conditions

to Closing have been satisfied or waived; then, and only then, the Escrow Agent will take the following actions in the following chronological order:

(a) Record in the Land Records the Memorandum of Lease (marked for return to AW9) against the Land;

(b) Deliver to AW9: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease, (ii) a fully executed original of the 9% Ground Lease; and (iii) the FCRHA Certificate;

(c) Deliver to FCRHA: (i) a conformed copy (showing all recording information thereon) of the Memorandum of Lease; (ii) a fully executed original of the 9% Ground Lease; (iii) two duly executed counterpart originals of the Guaranty for the 9% Ground Lease; and (iv) AW9 Certificate.

8.6 Closing Costs. As additional consideration for the lease of the Property pursuant to the 9% Ground Lease, AW9 will pay all escrow and recording fees and other closing costs charged by the Escrow Agent.

## Section 9. **CONDITIONS PRECEDENT; COVENANTS.**

9.1 AW9's Conditions. AW9's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived (other than Section 9.1(d) through Section 9.1(f), which may not be waived by AW9) unless AW9 exercises its rights pursuant to Section 9.4 below to terminate the Agreement or to extend the time for the Closing in accordance with Section 3.1 above:

(a) Representations and Warranties. FCRHA's representations and warranties contained in Section 5.2, as restated as of the Closing in the FCRHA Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in the FCRHA Certificate will be acceptable to AW9, in its sole but reasonable discretion.

(c) Performance. FCRHA will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by FCRHA prior to or at the Closing.

(d) Tax Credit Award. AW9 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 9% Ground Lease (and any and all challenge periods related to such award have expired).

(e) Financing. AW9 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(f) Land Use Entitlement Approvals. AW9 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(g) Permits and Construction Approvals. AW9 will have applied for and received all governmental approvals and permits, including building permits, for the construction of the buildings under the 9% Ground Lease.

(h) Final Plans and Specifications. AW9 will have received approval from FCRHA of the Final Plans and Specifications.

(i) Construction Contract. AW9 will have entered into a contract with a reputable general contractor for the construction of the buildings and other improvements to be constructed under the 9% Ground Lease.

9.2 FCRHA's Conditions. FCRHA's obligations under this Agreement to Close escrow are subject to the fulfillment of the following conditions at or prior to the Closing Date, each of which will be deemed waived unless FCRHA exercises its rights pursuant to Section 9.4 below to terminate the Agreement:

(a) Representations and Warranties. AW9's representations and warranties contained in Section 5.3, as restated as of the Closing in AW9 Certificate, will be true in all material respects at and as of the Closing.

(b) No Exceptions. Any material qualification or any exceptions of any kind to any of the representations or warranties set forth in AW9 Certificate will be acceptable to FCRHA, in its sole but reasonable discretion.

(c) Performance. AW9 will have performed and complied in all material respects with all covenants, agreements, terms, and conditions required by this Agreement to be performed or complied with by AW9 prior to or at the Closing.

(d) No Litigation. There will exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings by or against AW9 that would materially and adversely affect the ability of AW9 to perform its obligations under this Agreement.

(e) Tax Credit Award. AW9 will have obtained from the VH (and closed or be simultaneously closing) an award of Tax Credits for financing the construction to occur under the 9% Ground Lease (and any and all challenge periods related to such award have expired).

(f) Financing. AW9 will have obtained from investors and lenders (and closed or be simultaneously closing) any equity investment or loan financing or both in amounts sufficient to finance the Development.

(g) Land Use Entitlement Approvals. AW9 will have been approved for final, non-appealable Land Use Entitlement Approvals from each applicable Governmental Authority.

(h) Delivery of Option Notice; Approval of Supporting Documentation. AW9 will have delivered the Option Notice, the Supporting Documentation and any additional information required by FCRHA to issue the Approval Notice in accordance with Section 3.3, and FCRHA has approved the Supporting Documentation in accordance with Section 3.3.

9.3 Additional AW9 Covenants. AW9 covenants and agrees to satisfy the terms of this Section 9.3, prior to the Closing:

(a) Application for Tax Credits. AW9 will timely apply to VH for the Tax Credits in each applicable cycle during the Term for the Property, and AW9 will diligently and in good faith prosecute all steps and actions needed for the award of the Tax Credits. Promptly following the award of the Tax Credits, AW9 will (i) apply for and diligently prosecute in good faith all steps and actions needed to obtain loan or equity financing in amounts sufficient to finance the Development, and (ii) pursue the commitment of a tax credit investor for the purchase of the Tax Credits for the 9% Project.

In the event AW9 fails to satisfy the covenants set forth in this Section, FCRHA may avail itself to the rights and remedies set forth in Section 9.4 and Section 10 below.

9.4 Failure of Conditions. So long as a Party is not in default hereunder, if any condition to such Party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date or any other applicable date specified in this Agreement, such Party may, in its sole discretion, either (a) terminate this Agreement by delivering written notice to the other Party on or before the Closing Date, (b) extend the time available for the satisfaction of such condition, or (c) elect to close, notwithstanding the non-satisfaction of such condition, in which event such Party will be deemed to have waived any such condition. If such Party elects to proceed pursuant to clause (b) above, and such condition remains unsatisfied after the end of such extension period, then, at such time, such Party may elect to proceed pursuant to either clause (a) or (c) of the preceding sentence. In the event the failure of a condition precedent for the benefit of either Party is not satisfied due to a breach of this Agreement by the other Party (for example, a failure or refusal to perform a Party's obligations under this Agreement), the benefitted Party's rights and remedies will be as set forth in Section 10.

## **Section 10. DEFAULT; REMEDIES.**

10.1 FCRHA Default. In the event FCRHA refuses to consummate the transaction contemplated by this Agreement or in the case of any other default or breach by FCRHA hereunder, AW9 will give FCRHA written notice of such default or breach and will provide FCRHA with 30 days to cure the default or breach. In the event FCRHA fails to cure the default or breach within such 30 day period, AW9 will be entitled to (a) seek specific performance to enjoin FCRHA to cure such default or breach and consummate the transaction contemplated by this Agreement; or (b) terminate the Option. AW9 may terminate the Option if any condition to Closing contained in Section 9.1 has not been satisfied or waived by AW9 in writing by the Closing Date. Notwithstanding anything set forth above, AW9 will be entitled to recover monetary



damages from FCRHA in the event FCRHA defaults or breaches this Agreement and fails to convey the Property, so long as: (i) such failure is the result of FCRHA's refusal to convey the Property and not the failure to satisfy any condition outside of FCRHA's reasonable control (e.g. Section 5.2(b), Section 5.2(d) and Section 5.2(e)); (ii) all FCRHA's Conditions have been satisfied; and (iii) AW9 is not in default under this Agreement, beyond all applicable notice and cure periods.

10.2 AW9 Default. In the case of any default or breach by AW9 hereunder, FCRHA will give AW9 written notice of such default or breach and will provide AW9 with 30 days to cure the default or breach; provided, however, if such default or breach is not capable of being cured within 30 days, then AW9 will have an additional 30 days so long as AW9 continues to diligently pursue a cure. In the event AW9 fails to cure the default or breach within such period, FCRHA may terminate the Option. Additionally, FCRHA may terminate the Option in the event of any condition to Closing contained in Section 9.2 has not been satisfied or waived by FCRHA in writing by the Closing Date. FCRHA's remedies for any default or breach by AW9 hereunder will be terminating the Option; in no event shall the FCRHA be entitled to any damages from AW9 if AW9 defaults or breaches under this Agreement.

## Section 11. **RISK OF LOSS; CONDEMNATION OR CASUALTY**

11.1 Risk of Loss. Risk of loss will remain with FCRHA until Closing. FCRHA will notify AW9 of any (i) condemnation or taking by eminent domain of any portions of the Property or (ii) casualty event affecting the Property. AW9 and FCRHA agree that FCRHA has no obligation to restore the Property in the event of a condemnation or casualty event.

11.2 Obligation to Close. Notwithstanding any condemnation or casualty event, AW9 will remain obligated to close under this Agreement so long as such condemnation or casualty event does not materially and adversely affect the Property. For purposes of this Section, a condemnation or casualty event will "materially and adversely affect the Property" if, after completion of such condemnation or the occurrence of such casualty event, as applicable, AW9 would no longer be able to develop and construct the Development in substantial accordance with Land Use Entitlement Approvals, the Final Plans and Specifications and the 9% Ground Lease, subject to any minor adjustments caused by such condemnation or casualty event, as applicable. In the event of a condemnation or casualty event that has a material and adverse effect on the Property, (A) AW9 will have the right to terminate this Agreement without liability on its part by so notifying FCRHA within 15 Business Days of FCRHA's notification to AW9 of said condemnation or casualty event, and except as otherwise expressly set forth in this Agreement, neither FCRHA nor AW9 will have any further liability hereunder, and (B) if AW9 does not so terminate the Agreement, then AW9 will remain obligated to close under this Agreement and neither such condemnation or casualty event nor the condition of the Property thereafter will be deemed to give rise to a default hereunder.

## Section 12. **MISCELLANEOUS PROVISIONS.**

12.1 No Brokers, Finders, Etc. None of the Parties has engaged any agent, broker, finder or investment or commercial banker in connection with the negotiation, execution or performance of this Agreement, or the transactions contemplated hereby.

12.2 Expenses. Except as specifically set forth herein, whether or not the transaction contemplated by this Agreement is consummated, each of the Parties will pay their own fees and expenses incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

12.3 Complete Agreement; Waiver and Modification, Etc. This Agreement and the 9% Option to Lease dated as of the date hereof between the FCRHA and AW9 for the 9% Ground Lease constitutes the entire agreement between the Parties hereto and thereto pertaining to the subject matter hereof and thereof and supersedes all prior and contemporaneous agreements and understandings of the Parties. There are no representations, warranties, covenants, or conditions by or benefiting any Party except those expressly stated or provided for in this Agreement, any implied representations, warranties, covenants, or conditions being hereby expressly disclaimed. No person or entity other than the Parties to this Agreement have any rights or remedies under or in connection with this Agreement, except rights or remedies validly assigned hereunder. No amendment, supplement or termination of or to this Agreement, and no waiver of any of the provisions hereof or thereof, will require the consent of any person or entity other than the Parties hereto, nor will any such amendment, supplement, termination or waiver be binding on a Party to this Agreement unless made in a writing signed by such Party. To the extent any provision of the Option conflicts with, or is inconsistent with, this Agreement, then this Agreement shall govern and control.

12.4 Communications. Whether expressly so stated or not, all notices, demands, requests and other communications required or permitted by or provided for in this Agreement (“**Communications**”) will be given in writing to the Parties at their respective addresses set forth below, or at such other address as a Party will designate for itself in writing in accordance with this Section:

If to AW9, to:

C/O The Michaels Development Company I, L.P.  
PO Box 90708  
Camden, NJ 08101  
Attn: Kenneth P. Crawford, COO

with a copy to:

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

and a copy to:

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

and a copy to:

Klein Hornig LLP  
1325 G Street, NW, Suite 770

Washington, DC 20005  
Attention: Chris Hornig

If to FCRHA, to:

Fairfax County Redevelopment and Housing Authority  
Attention: Director, HCD  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-6039 e-mail:  
[Thomas.Fleetwood@fairfaxcounty.gov](mailto:Thomas.Fleetwood@fairfaxcounty.gov)

-and-

Fairfax County Redevelopment and Housing Authority  
Attention: Ms. Teresa Lepe  
3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-6039  
e-mail: [Teresa.Lepe@fairfaxcounty.gov](mailto:Teresa.Lepe@fairfaxcounty.gov)

With a copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, Virginia 22035-0064  
e-mail: [Beth.Teare@fairfaxcounty.gov](mailto:Beth.Teare@fairfaxcounty.gov)

Communications may be transmitted (a) electronic mail transmission (with a copy sent the next business day by one of the other methods permitted hereunder), (b) reputable overnight courier (with a signed receipt) or (c) hand delivery (with receipt acknowledged in writing by the office of the addressee). Except as otherwise provided in this Agreement, delivery or service of any Communications will be deemed effective only upon receipt (or refusal of receipt), and receipt will be deemed to have occurred when the Communications were delivered to the specified address without regard to whether or not a representative of the addressee was present to receive the Communications or was present but refused receipt of such Communications; provided, any Communications delivered after 5:00 P.M. local time of place of receipt, or on a day other than a Business Day, will be deemed received on the next succeeding business day. Either of the Parties may change the address(es) to which any such Communications are to be delivered by furnishing 10 Business Days written notice of such change(s) to the other of the Parties in accordance with the provisions of this Section.

12.5 Governing Law. This Agreement will be interpreted in accordance with and governed by the laws of the Commonwealth of Virginia.

12.6 Headings; References; “Hereof,” Etc. The Section headings in this Agreement are provided for convenience only, and will not be considered in the interpretation hereof or thereof. References in this Agreement to Sections or Exhibits refer, unless otherwise specified, to the designated Section of or Exhibit to this Agreement, and terms such as “herein,” “hereto” and “hereof” used in this Agreement refer to this Agreement as a whole.

12.7 Successors and Assigns. AW9 may not assign its rights under this Agreement to any party without the consent of FCRHA, which may be withheld in FCRHA’s sole and absolute discretion. Notwithstanding the foregoing to the contrary, AW9 will be permitted to assign its rights under this Agreement to any person or entity which directly or indirectly controls, is controlled by or is under common control with The Michaels Group (“AW9 Parent”), or to any person or entity resulting from a merger or consolidation with AW9 Parent, or to any person or entity which acquires all the assets of AW9 Parent’s business as a going concern pursuant to a written agreement, reasonably acceptable to FCRHA, provided that (i) such assignment or sublease is not a subterfuge to avoid the application of the provisions of this Section 12.7, (ii) the assignee assumes, in full, the obligations of AW9 hereunder, and (iii) AW9 provides FCRHA with written notice of any such assignment at least one (1) month prior to the Closing Date. This Section 12.7 will be subject to the provisions of Section 12.16, and will in no way limit AW9’s rights set forth in Section 12.16.

12.8 Severability. If for any reason any provision of this Agreement will be held invalid, illegal or unenforceable in whole or in part in any jurisdiction, then that provision will be ineffective only to the extent of that invalidity, illegality or unenforceability and in that jurisdiction only, without in any manner affecting the validity, legality or enforceability of the unaffected portion and the remaining provisions in that jurisdiction or any provision of this Agreement in any other jurisdiction.

12.9 Cumulative Rights and Remedies. The rights and remedies of each Party under this Agreement are cumulative, except as otherwise expressly provided.

12.10 Survival of Representations and Warranties. Except as otherwise expressly provided in this Agreement, all representations, warranties, covenants and agreements of the Parties contained in this Agreement will be considered material and will be effective and survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby notwithstanding any investigation of the matters covered thereby by or on behalf of any Party benefited by any such representation, warranty, covenant or agreement or any knowledge (actual or constructive) on the part of any Party benefited by any such representation, warranty, covenant or agreement as to the truth or accuracy (or falseness or inaccuracy) thereof.

12.11 Further Assurances. From time to time and at any time after the execution and delivery hereof, each of the Parties, at their own expense, will execute, acknowledge and deliver any further instruments, documents and other assurances reasonably requested by the other Party, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by the other Party to evidence or carry out the intent of or to implement this Agreement.

12.12 Counterparts; Separate Signature Pages. This Agreement may be executed in any number of counterparts, or using separate signature pages. Each such executed counterpart and each counterpart to which such signature pages are attached will be deemed to be an original instrument, but all such counterparts together will constitute one and the same instrument.

12.13 Time; Business Days. **WHETHER EXPRESSLY SO STATED OR NOT IN CONNECTION WITH ANY OBLIGATION, TIME IS OF THE ESSENCE IN THE PERFORMANCE OF EACH PARTY'S RESPECTIVE OBLIGATIONS UNDER THIS AGREEMENT, AND NO NOTICE OF A PARTY'S INTENT TO REQUIRE STRICT COMPLIANCE WITH ANY OF THE DEADLINES SET FORTH IN THIS AGREEMENT IS REQUIRED.** If any time period set forth in this Agreement would otherwise expire on a Saturday, Sunday or holiday, such time period will be automatically extended to the next business day. As used in this Agreement, the term "Business Days" will mean any day which is not a Saturday, Sunday or a day observed as a holiday by the County of Fairfax, Virginia or the federal government.

12.14 Estoppel Certificates. Each Party will, from time to time upon 15 Business Days' prior request by another Party, execute, acknowledge and deliver to the requesting Party a certificate signed by an authorized representative of such Party stating that to the knowledge of such Party this Agreement (a) is or is not in full force and effect, (b) is or is not unmodified (and, if modified, the details of the modification(s)), and (c) that default(s) do or do not exist hereunder (and if defaults do exist, the nature thereof to the extent known).

12.15 Incorporation of Recitals. The Recitals set forth above are hereby incorporated into this Agreement.

12.16 Ownership Structure. FCRHA acknowledges that due to lender requirements, investor requirements, tax issues and certain other factors, some of which are not known to AW9 as of the date of this Agreement, it is not possible for AW9 to commit to a final ownership structure for the Development as of the date of this Agreement. Therefore, FCRHA agrees that AW9 will have the right to submit a proposed ownership structure of the ground tenant or ground tenants under one or more Ground Leases prior to the Closing Date for FCRHA's review and approval, which FCRHA will approve, so long as (i) the ground tenant under any Ground Lease for the Development is controlled, directly or indirectly, by AW9 Parent and (ii) the rights of FCRHA under the Ground Lease are not materially adversely affected. *By way of example and not limitation*, AW9 may separately establish a Ground Lease with a ground tenant to own a portion of the Development that utilizes the 9% Tax Credits and a separate Ground Lease with a ground tenant to own a portion of the Development that utilizes the 4% Tax Credits, or FCRHA may provide a single Ground Lease to a ground tenant that subleases a portion of the Property to a subtenant that utilizes the 9% Tax Credits and to a different subtenant that utilizes the 4% Tax Credits. To accomplish this apportionment, the Property may be subdivided or subjected to a land condominium regime. Due to the fluid nature of the ownership structure, FCRHA acknowledges and agrees that AW9, AW9 Parent or one or more subsidiaries directly or indirectly controlled by AW9 Parent may fulfill one or more of the obligations of AW9 under this Agreement, including making an application for the Tax Credits.

*[Signatures on the following page]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date first written above.

**FCRHA:**

**FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA            )  
COUNTY OF FAIRFAX                    ) to wit

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_, on behalf of the Fairfax County Redevelopment and Housing Authority.

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

My commission expires:  
\_\_\_\_\_

*[Signatures continue on following page]*

**AW9:**

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

By: Autumn Willow 9 MM, LLC,  
a Virginia limited liability company,  
its Managing Member

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

By: \_\_\_\_\_  
Name: John J. O'Donnell  
Title: President

COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX, to wit:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
by \_\_\_\_\_, the \_\_\_\_\_, on behalf of [\_\_\_\_\_].

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

My commission expires:  
\_\_\_\_\_



**EXHIBIT A-1 and A-2**

**THE LAND**



**EXHIBIT B**

**FORM OF GROUND LEASE**

**(Attached)**