

AMENDMENT TO DEVELOPMENT AND LOAN AGREEMENT

THIS AMENDMENT TO DEVELOPMENT AND LOAN AGREEMENT (this “**Amendment**”) is made and entered into as of this ___ day of April, 2020 (the “**Amendment Date**”), by and among the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (“**FCRHA**”), AND **THE RESIDENCES AT NORTH HILL 2, LLC**, a Virginia limited liability company (“**Developer**”; collectively with the FCRHA, the “**Parties**”).

RECITALS

1. The Parties have entered into the Development and Loan Agreement, dated as of March __, 2020 (the “**DLA**”). Each capitalized term used but not defined in this Amendment has the meaning given to such term in the DLA.

2. Section 1.03(B) of the DLA (a) requires Developer to use a separate contract for the construction of the Site Work apart from the contract for the construction of the vertical construction of the 9% Project but (b) allows Developer to request an amendment to the DLA permitting a single-contract structure.

3. Developer’s senior lender for the 9% Project – the Virginia Housing Development Authority – is requiring that Developer use a single-contract structure. Accordingly, Developer has requested an amendment to the DLA.

4. Additionally, due to unexpected increases in the anticipated costs of the design and construction of the retaining walls necessary for the construction of the Affordable Housing Units, the Parties wish to amend the DLA to address these increased retaining wall costs.

NOW, THEREFORE, in consideration of the mutual promises of the Parties and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Developer may use a single contract with the General Contractor for both the construction of the Site Work and for the vertical construction of the 9% Project. The term “**Site Work Contract**”, as used in the DLA, will refer to this single contract.

2. Developer acknowledges that no Loan proceeds may be requested or used for the vertical construction of the 9% Project or any other use ineligible under CDBG program rules and regulations, except as permitted for Non-Federal Funds as provided in the DLA.

3. Additional Amendments.

a. Section 1.02 and Exhibits B, C, D, and F. Pursuant to that certain Deed of Subdivision, Dedication, Easement, Quitclaim, and Vacation, dated as of _____, 2020 and recorded in the land records of Fairfax County, Virginia in Deed Book [] at Page [], the FCRHA – with the consent of CHPPENN, Developer, and the Other Tenants – subdivided the

Commented [WRA1]: NB – If subdivision not finished by April 2, can remove provision and accomplish through subsequent amendment.

Existing FCRHA Land into separate Fairfax County tax map parcels for each of the Park, the Townhome Tract, the 9% Premises, the 47 Premises, the 94 Premises, and the Senior Premises. Accordingly, pursuant to Section 1.02 of the DLA, **Exhibits B, C, D, and F** of the DLA are hereby deleted and replaced with **Exhibits B, C, D, and F** to this Amendment, establishing the Multifamily Site, the 9% Premises, the Park, and the Townhome Tract, respectively.

b. Section 1.03(A). The scope of the Site Work Contract will include the Plans but may also include other work not funded by Loan proceeds.

c. Section 1.05(B)(3). Section 1.05(B)(3) of the DLA is hereby amended by deleting the phrase “December 31, 2021” and replacing such deleted text with “December 31, 2022”.

d. Section 2.01(A)(1). Section 2.01(A)(1) of the DLA is hereby amended by (i) deleting the number “1,692,774” the first time it appears and replacing such deleted number with “[2,627,155]”; and (ii) deleting the number “\$0” the second time it appears and replacing such deleted number with “[934,381]”.

e. Section 2.01(A)(1)(a). Section 2.01(A)(1)(a) of the DLA is hereby amended by deleting the number “\$12,550,000” and replacing such deleted number with “[14,135,682]”.

f. Section 2.01(C). Section 2.01(C) of the DLA is hereby deleted in its entirety and replaced with the following:

“C. Conditions. The FCRHA shall have no obligation to provide Loan proceeds until (1) the Townhome Tract is sold to a third party and the FCRHA receives the full sales price under the Townhome Purchase Contract; (2) all four Ground Leases are executed; (3) the FCRHA has approved the Plans; (4) the FCRHA has approved the Budget; (5) the FCRHA has approved the Site Work Contract pursuant to Section 3.02(C); (6) Developer and/or CHPPENN has obtained technical approval from LDS for the retaining wall located on the Multifamily Site; (7) Developer has provided the FCRHA with the original signed Guaranty; and (8) the U.S. Department of Housing and Urban Development has completed and approved, regarding the Affordable Housing Units, both (a) an environmental review, as required by federal regulations pertaining to the use of HUD funds (such as CDBG), including 24 C.F.R. part 50 or part 58, and (b) a subsidy layering review, as required by federal regulations pertaining to the use of project-based vouchers, including 24 C.F.R. § 983.55 and 24 C.F.R. § 4.13. Further, the FCRHA will provide Loan proceeds only in connection with an invoice for completed Site Work, in accordance with the terms of this Agreement.”

g. Section 2.02(B)(2). Section 2.02(B)(2) of the DLA is hereby deleted in its entirety and replaced with the following:

“certifications, in commercially reasonable forms and as appropriate for each of such party’s role in completing the Site Work, (a) of the General Contractor and the architect of

Commented [WRA2]: NB – Based on allocated increase of \$934,381.

NB – Figure may change so long as the aggregate change over original DLA figure, across all four deals, equals the difference between the \$12,550,000 and the new figure in Sec. 2.01(A)(1)(a).

Commented [WRA3]: NB – Figure in (ii) may decrease with corresponding increase in CDBG Work Funds; total change between the two must equal the change in (i).

Commented [WRA4]: NB – Based on estimated increase in wall costs of \$1,585,682. Subject to reduction based on any decrease in estimated wall costs before April 2.

record, certifying (i) the percentage of completion of the Site Work, and (ii) that the Site Work completed meets Site Work Contract specifications, and (b) of the Developer, certifying that the remaining Loan amount, together with other funds available to Developer are sufficient to complete the Site Work (each a “**Certification**” and collectively, the “**Certifications**”);”

h. Section 2.02(G). Section 2.02(G) of the DLA is hereby amended by (i) deleting the number “\$1,692,774” and replacing such deleted number with “\$[2,627,155]” and (ii) deleting the number “\$1,665,182” and replacing such deleted number with “\$[2,599,563]”.

i. Section 3.02(D). Developer may modify the Site Work Contract without the prior approval of the FCRHA (as otherwise required by Section 3.02(D) of the DLA), so long as the modification does not affect the Site Work. Such modifications may still require notice to or approval of the FCRHA under agreements other than the DLA (i.e., the 9% Ground Lease).

j. Section 3.04. Section 3.04 of the DLA is hereby amended by adding the phrase “related to the Site Work” after the phrase “work or materials”.

k. Section 3.06 & Exhibit M. Section 3.06 and Exhibit M will apply only with respect to the Site Work and not the vertical construction of the Senior Project.

l. Section 4.02. Section 4.02 of the DLA is hereby amended by deleting the text “December 31, 2019” and replacing such deleted text with “May 15, 2020”.

4. Miscellaneous. Except as amended by this Amendment, the DLA is and remains in full force and effect.

[Signatures appear on the following page.]

Commented [WRA5]: NB – Based on allocated increase of \$934,381.

NB – Figure may change so long as the aggregate change over original DLA figure, across all four deals, equals the difference between the \$12,550,000 and the new figure in Sec. 2.01(A)(1)(a).

Commented [WRA6]: NB – Figure may change so long as the aggregate change over original DLA figure, across all four deals, equals the difference between the \$12,550,000 and the new figure in Sec. 2.01(A)(1)(a).

Commented [WRA7]: Figure here will ultimately be previous figure, minus \$27,592.

IN WITNESS WHEREOF, the Parties have caused this Amendment to be executed as of the Amendment Date.

FCRHA:

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

By: _____
Name: Thomas Fleetwood
Title: Assistant Secretary

DEVELOPER:

THE RESIDENCES AT NORTH HILL 2, LLC

a Virginia limited liability company

By: CHPPENN The Residences at North Hill 2, LLC
a Virginia limited liability company
its managing member

By: CHPPENN The Residences at North Hill JV, LLC
a Virginia limited liability company
its sole member

By: CHP North Hill, LLC
a Virginia limited liability company
its manager

By: Community Housing Partners Corporation
a Virginia nonstock corporation
its sole member

By: _____
Name:
Title:

And by: PENN North Hill, LLC
a Virginia limited liability company
its manager

By: Pennrose GP, LLC
a Pennsylvania limited liability company
its sole member

By: _____
Name:
Title: