

## DEVELOPMENT AND LOAN AGREEMENT

THIS DEVELOPMENT AND LOAN AGREEMENT (this “**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019 (the “**Agreement 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 BOND 94, LLC**, a Virginia limited liability company (“**Developer**”; collectively with the FCRHA, the “**Parties**”).

### RECITALS

1. The FCRHA is the fee simple owner of an approximately 48-acre tract of land in Fairfax County, Virginia, having the Fairfax County Tax Map No. 92-4 ((1)), parcel 82A (the “**Existing FCRHA Land**”).

2. The Existing FCRHA Land is comprised of (a) the Woodley Hills Estates manufactured home community, which occupies approximately 14 of the 48 acres, and (b) an approximately 34-acre, unimproved tract of land known as North Hill and generally described on ~~Exhibit A~~ attached hereto (such 34 acre tract, the “**North Hill Property**”).

3. In 2012, the FCRHA received an unsolicited proposal from a developer under the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (the “**PPEA**”) proposing to redevelop the North Hill Property as a mixed income, affordable housing and market rate housing community comprised of multifamily apartments and townhouses.

4. In accordance with the PPEA and the FCRHA PPEA guidelines, the FCRHA then issued a “Request for Competing Proposals”, RCP number RFCP 2000000000 in 2013 (the “**RCP**”). The RCP included criteria calling for, among other things, development of approximately 350 or more units on a portion of the North Hill Property, with the undeveloped balance to be preserved as parkland.

5. CHPPENN I, LLC, a Virginia limited liability company and an affiliate of Developer (“**CHPPENN**”) submitted a response to the RCP which was determined to be the most responsive to the RCP. In its response, CHPPENN proposed, among other things, the construction of approximately 329 affordable multifamily units and approximately 144 for-sale townhomes on a portion of the North Hill Property.

6. After negotiations with the FCRHA, CHPPENN proposed the construction of a maximum of 279 multi-family dwelling units, including approximately 63 senior independent living units, in five separate, high quality, urban designed buildings (the “**Affordable Housing Units**”) on one or more portions of the North Hill Property described in Exhibit B (collectively, the “**Multifamily Site**”).

7. CHPPENN proposed to develop the Multifamily Site through four separate ground leases (each a “**Ground Lease**”), each between the FCRHA as landlord and a CHPPENN affiliate as tenant, and each pursuant to a Contract to Ground Lease originally between the FCRHA and CHPPENN (each a “**Contract to Ground Lease**”).

8. CHPPENN has assigned the Amended and Restated Contract to Ground Lease – 4% 94 Units, dated as of September 15, 2017 (the “**94 Contract**”), to Developer. At Closing, Developer will become the tenant under the related Ground Lease (the “**94 Ground Lease**”) and will construct 94 Affordable Housing Units, generally in conformance with Fairfax County Building Permits 191350286 and 191340011 (the “**94 Project**”) on the 94 Ground Lease premises, as described in **Exhibit C** (the “**94 Premises**”).

9. CHPPENN has assigned each of the other three Contracts to Ground Lease to a separate affiliate. Specifically, CHPPENN has assigned the Contract to Ground Lease – 9%, dated as of March 2, 2017 (the “**9% Contract**”), to The Residences at North Hill 2, LLC (the “**9% Tenant**”); the Contract to Ground Lease – 9% Senior, dated as of March 2, 2017 (the “**Senior Contract**”) to The Senior Residences at North Hill, LLC (the “**Senior Tenant**”); and the Amended and Restated Contract to Ground Lease – 4% 47 Units, dated as of September 15, 2017 (the “**47 Contract**”), to The Residences at North Hill Bond 47, LLC (the “**47 Tenant**”); together with the 9% Tenant and the Senior Tenant, the “**Other Tenants**”). Each of the 9% Tenant, the Senior Tenant, and the 47 Tenant will become a tenant under the applicable related Ground Lease (respectively, the “**9% Ground Lease**,” the “**Senior Ground Lease**,” and the “**47 Ground Lease**”) and will construct Affordable Housing Units (respectively, the “**9% Project**,” the “**Senior Project**,” and the “**47 Project**”) on the respective Ground Lease premises (respectively, the “**9% Premises**,” the “**Senior Premises**,” and the “**47 Premises**”).

10. The Parties also intend that a portion of the remainder of the North Hill Property, as described in **Exhibit D** (the “**Park Tract**”), will be retained by the FCRHA or other public entity, to be developed and maintained by the FCRHA or other public entity for use as a public park (the “**Park**”). Notwithstanding the development of the Park Tract by the FCRHA or other public entity (such as the Fairfax County Park Authority), Developer has agreed to construct certain improvements relating to the Park (as further defined in **Exhibit E**, the “**Developer Park Improvements**”).

11. Further in connection with the RCP and the North Hill Property, the FCRHA intends to sell the portion of the North Hill Property described in **Exhibit F** (“**Townhome Tract**”) pursuant to the Agreement of Purchase and Sale between the FCRHA and K. Hovnanian Homes of Virginia, Inc., dated as of February 5, 2019, as amended (the “**Townhome Purchase Contract**”). The purchaser under the Townhome Purchase Contract will construct approximately 175 for-sale townhomes (the “**For-Sale Townhomes**”).

12. The FCRHA also intends to loan a portion of the proceeds of the sale of the Townhome Tract, together with certain additional funds, to Developer to pay for a portion of the site work costs of the 94 Project (as further described herein, the “**Loan**”).

13. This Agreement is intended to facilitate and govern (A) the development of certain infrastructure and site work for the 94 Premises and the North Hill Property, as further described below, as well as the Developer Park Improvements (collectively, the “**Site Work**”), (B) the Loan, and (C) the delivery of the 94 Project.

14. The North Hill Property is now subject to Rezoning / Final Development Plan RZ/FDP 2016-MV-014 and Proffered Condition Amendment PCA 78-V-125, approved by the

Board of Supervisors of Fairfax County, Virginia on February 14, 2017 (collectively, the “**Land Use Approvals**”) and certain proffers dated February 9, 2017, accepted in connection therewith (the “**Proffers**”).

15. The Parties now desire to enter into this Agreement to outline each of their respective responsibilities with respect to the Site Work, the Loan, and the 94 Project.

**ARTICLE I.**  
**Site Work and 94 Project**

**Section 1.01 General.** Developer agrees to perform and construct the Site Work and the 94 Project in accordance with the terms and provisions of this Agreement.

**Section 1.02 Land Areas.** The Parties acknowledge that each of **Exhibits B, C, D, and F** provide only approximate descriptions of the applicable land area. The Parties agree that, upon completion of a subdivision or other process establishing specific parcel boundary lines, the Parties will execute an amendment to this Agreement updating each of **Exhibits B, C, D, and F** with descriptions of the applicable land areas conforming to the boundaries established by such subdivision or other similar process.

**Section 1.03 Scope of Site Work.**

- A. **General.** Preliminary drawings of the Site Work are attached as **Exhibit G** (the “**Preliminary Plans**”). Before Closing, Developer must provide an updated set of drawings and specifications, to the FCRHA for approval, not to be unreasonably withheld (once approved by the FCRHA, the “**Plans**”). The Site Work shall consist of all improvements shown and described on the Plans. The Plans will also constitute the scope of the Site Work Contract (as defined below).
- B. **Relation to Affordable Housing Units.** No costs of vertical construction of the 94 Project will be eligible for reimbursement with Loan proceeds. Developer shall use a contract for the Site Work that is separate from the contract(s) Developer uses for the vertical construction of the 94 Project. Developer may, however, request that the FCRHA approve Developer’s use of a single contract for both the Site Work and the vertical construction of the 94 Project. The FCRHA will not unreasonably withhold, condition, or delay such approval, so long as (i) such single contract, as well as the use of Loan proceeds to pay for Site Work costs incurred through such single contract, conform, in the reasonable opinion of the FCRHA, to all applicable CDBG (as defined below) program requirements and allow the FCRHA to clearly account for the use of all Loan proceeds, and (ii) the Parties have agreed to an amendment to this Agreement that, in the reasonable opinion of the FCRHA, revises such terms of this Agreement as necessary to account for a single contract structure.
- C. **Relation to Townhome Tract.** Developer represents and warrants that no infrastructure or other improvements located on the Townhome Tract comprises any portion of the Site Work (except as the FCRHA may approve in writing). For purposes of clarity, the portions of the retaining wall(s) described in the Land Use Approvals and located on the Townhome Tract are not part of the Site Work.

**Section 1.04 [Reserved.]**

**Section 1.05 Schedule.**

- A. Schedule. A preliminary schedule for the completion of both the Site Work and the 94 Project is attached as **Exhibit H**. Before Closing, Developer must provide an updated schedule, containing reasonable detail and based on input from the General Contractor, to the FCRHA for approval, not to be unreasonably withheld (once approved by the FCRHA, the “**Schedule**”). Developer may not further amend the Schedule without the prior written approval of the FCRHA.
- B. Milestones. Developer will construct and complete the Site Work and the 94 Project in accordance with the following milestones (each, a “**Milestone**”):
1. Developer will commence construction of the Site Work promptly after – but in no event more than 30 days after – the FCRHA and Developer sign the 94 Ground Lease (“**Closing**”).
  2. Developer shall reach Site Work Milestone (as defined below) by no later than ten (10) months after Closing, as extended for any Force Majeure. “**Force Majeure**” means events occasioned by strikes, lock-outs, war or civil disturbance, natural disaster or, acts of God, or other events outside the reasonable control of Developer which cause a delay in Developer’s performance of an obligation; provided, however, that Developer must give written notice to Lender within ten (10) days after the occurrence of an event which it believes to constitute an event of Force Majeure.
  3. Developer will place the 94 Project in service, in accordance with applicable low-income housing tax credit rules and regulations, by no later than December 31, 2021, or such later date to which the FCRHA and Developer may later reasonably agree.
  4. Developer will lease at least 85 units in the 94 Project to an eligible household, under the Proffers and the 94 Ground Lease, by no later than 3 years after Closing.
- C. Site Work Milestone. “**Site Work Milestone**” shall mean that each of the following has been accomplished:
1. Developer has completed each of the following in substantial accordance with the Plans: the retaining wall and related elements (except for the main stairwell) (collectively, the “**Wall**”); all utilities, including stormwater management and outfall; and curb and gutters except those portions along Route 1 and Dart Drive.
  2. The interior street network is built to base level.
  3. Final grading has been established.
  4. The elements listed in Section 1.05(C)(1) above have all been inspected and

approved by the appropriate governmental authority/ies, including that the building inspector from the Fairfax County Department of Land Development Services has issued his/her final approval of the Wall.

**Section 1.06 Budget and Funding of the Site Work.**

- A. Preliminary Budget. Attached hereto as **Exhibit I** and made a part hereof is a preliminary budget for the Site Work (the “**Preliminary Budget**”) setting forth all of the estimated costs, as of the Agreement Date, for performing and constructing the Site Work. The Parties agree that the Preliminary Budget does not constitute the budget described in Section 8.2(l) of the 94 Contract; rather, the Budget, as defined below (including FCRHA approval) shall be the budget described in Section 8.2(l) of the 94 Contract.
- B. Budget. Before Closing, Developer shall prepare an updated budget for the Site Work (upon approval by the FCRHA as described in this Section, the “**Budget**”). The Budget shall be reasonably detailed, shall not reflect any Loan proceeds as applying to any Prohibited Uses (defined below), shall be based on cost information from the General Contractor, shall include a 5% contingency (“**Contingency**”), and shall be submitted to the FCRHA for its review and approval prior to Closing, which the FCRHA may grant or withhold in its sole discretion. The FCRHA acknowledges that the 9% Tenant, the Senior Tenant, and the 47 Tenant intend to contribute separate funds toward the Site Work.
- C. Updates to Budget - General. If Developer believes that any material modifications to the Budget are necessary after the FCRHA approves the Budget, then Developer may propose a modified Budget to the FCRHA for the FCRHA’s approval. Modifications to the Budget shall be deemed “material” if such modifications would result in (1) an adjustment of more than ten percent (10%) in any line item of the Budget or (2) an increase in the total Budget.
- D. Updates to Budget – Final. Upon Final Completion, the Developer shall provide the FCRHA a final Budget showing the actual expenditures incurred in the completion of the Site Work (“**Final Budget**”).
- E. Cost of the Work. Developer shall be solely responsible for any and all costs of the Site Work, provided, however, that Developer will receive Loan proceeds in accordance with and subject to the terms of this Agreement.
- F. Guaranty. Before Closing, Developer shall provide the FCRHA with a guaranty in the form attached to this Agreement as **Exhibit J** (“**Guaranty**”), executed by an entity satisfactory to the FCRHA in its reasonable discretion (“**Guarantor**”). In the event that Guarantor fails to meet the net worth requirement set forth in the Guaranty at any time prior to Final Completion, Developer shall promptly replace such Guarantor with another creditworthy entity reasonably satisfactory to the FCRHA meeting the net worth requirement and cause such entity to enter into the Guaranty in the form annexed to this Agreement as **Exhibit J**.

**ARTICLE II.**

**Loan**

## Section 2.01 Loan Generally.

### A. Amount and Eligible Uses.

1. Subject to the terms of this Agreement, including its provisions pertaining to the Budget and invoicing, the FCRHA shall make a Loan of up to \$4,251,739 to Developer for certain costs of the Site Work. Of the Loan, \$229,000 shall constitute “**CDBG Predevelopment Funds**,” \$4,022,739 shall constitute “**CDBG Work Funds**,” and \$0 shall constitute “**Non-Federal Funds**”.
  - (a) In connection with the Closing, the FCRHA also anticipates making similar loans to the 47 Tenant, the Senior Tenant, and the 9% Tenant comprised of mostly or all CDBG funds (collectively, the “**Other CDBG Loans**”). In the aggregate, the maximum amounts of the Loan and the Other CDBG Loans equal \$12,550,000. Developer may request an increase in the maximum Loan amount set forth in Section 2.01.A.1, subject to (i) the reasonable approval of the FCRHA, (ii) compliance with CDBG program rules and regulations, and (iii) the consent of one or more of the Other Tenants to a corresponding reduction in the amount of the applicable Other CDBG Loan(s).
2. The FCRHA will disburse Loan proceeds only for costs that satisfy all of the following criteria, as applicable:
  - (a) Costs to be reimbursed by CDBG Predevelopment Funds or CDBG Work Funds must be eligible costs under the rules, regulations, and guidance of the Community Development Block Grant (“**CDBG**”) program of the U.S. Department of Housing and Urban Development (“**HUD**”) and must further comply with the following:
    - (1) CDBG eligible uses of CDBG Predevelopment Funds are developer fee, engineering, geotech, and design costs of the Site Work.
    - (2) CDBG eligible uses of CDBG Work Funds are limited to earth work, erosion and sediment control, utility installation, road improvements, storm water management, site improvements, removal of marine clay soils, and building of needed retaining walls.
3. The FCRHA will disburse Loan proceeds only with respect to a given portion of the Site Work up to the line item amount for such portion set forth on the Budget (as it may be adjusted from time to time in accordance with this Agreement) and any remaining Contingency.

- B. Prohibited Uses. The FCRHA will have no obligation to provide any Loan proceeds for any of Developer’s zoning and due diligence costs in connection with the Site Work or the Affordable Housing Units, or, solely with respect to CDBG Work Funds and CDBG Predevelopment Funds, any costs that the FCRHA reasonably determines to be an ineligible use under the CDBG program (“**Prohibited Uses**”).

- 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 has provided the FCRHA with the original signed Guaranty; and (7) 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.
- D. Loan Documents. On or before Closing, Borrower will execute and deliver to the FCRHA (1) a promissory note evidencing the Loan (“**Note**”) and (2) a deed of trust securing the Loan and the Developer’s performance of its obligations under this Agreement against the Developer’s interest in the 94 Ground Lease (“**Deed of Trust**”), each in a form to be provided by the FCRHA in accordance with its CDBG program.

## **Section 2.02 Invoicing**

- A. Developer may request disbursement of Loan proceeds in accordance with this Agreement, including this Section 2.02.
- B. On or before the tenth (10<sup>th</sup>) business day of each calendar month after Closing, Developer shall submit to the FCRHA (collectively, the “**Monthly Draw Request**”):
1. a draw request in a form reasonably acceptable to the FCRHA, including a breakdown of the requested Loan proceeds by type (CDBG Predevelopment Funds, CDBG Work Funds, and Non-Federal Funds) and descriptions of the CDBG eligible use(s) applicable to the Site Work to be funded by any CDBG Predevelopment Funds or CDBG Work Funds through such draw request;
  2. certifications of the General Contractor and the architect of record, in commercially reasonable forms and as appropriate for each of such party’s role in completing the Site Work, certifying (a) the percentage of completion of the Site Work, (b) that the Site Work completed meets Site Work Contract specifications, and (c) 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**”);
  3. unconditional lien releases executed by the General Contractor and all Major Subcontractors, consultants, subcontractors, or materialmen as to amounts received by such Parties pursuant to the immediately preceding Monthly Draw Request;
  4. a report setting forth all costs, fees, and expenses incurred during the previous calendar month and the total to date in connection with the performance of the Site

Work, and a comparison of such costs, fees and expenses to the corresponding costs, fees and expenses permitted by the Budget for the Site Work;

5. a report describing the categories of Site Work completed as of such date, and a comparison of such completed categories of Site Work to the Site Work required to be completed under the Schedule;
6. monthly Davis Bacon certification and payrolls; and
7. any additional information the FCRHA may reasonably request as necessary to review and approve the requested draw.

For purposes of this Section 2.02 only, Developer will submit hard copies of the Monthly Draw Requests to the FCRHA at FCRHA, 3700 Pender Drive, Fairfax, VA 22030, Attention: Laura Lazo (North Hill) with a copy to FCRHA, 3700 Pender Drive, Fairfax, VA 22030, Attention: Ahmed Rayyan (North Hill). Developer will also send electronic copies of Monthly Draw Requests to [laura.lazo@fairfaxcounty.gov](mailto:laura.lazo@fairfaxcounty.gov) and [ahmed.rayyan@fairfaxcounty.gov](mailto:ahmed.rayyan@fairfaxcounty.gov).

- C. The FCRHA shall review each Monthly Draw Request within fifteen (15) business days after receipt thereof, together with the Certifications and the other materials set forth in this Section 2.02, including any other requested information. Within such fifteen (15) business day period, the FCRHA shall either (1) approve the Monthly Draw Request in whole or in part, and remit the amounts approved by the FCRHA as set forth in this Section 2.02; or (2) reasonably disapprove the Monthly Draw Request in whole or in part, due to incomplete or inaccurate information or failure by Developer to submit the necessary information required under this Section 2.02 and with such disapproval detail specifying the incomplete or inaccurate information or necessary information required under this Section 2.02 that Developer failed to submit. Upon cure to the reasonable satisfaction of the FCRHA by Developer of the cause of any disapproval, Developer may include the previously disapproved amount in the next Monthly Draw Request, and the FCRHA shall fund such amount in accordance with this Section 2.02. Notwithstanding anything contained in this Section 2.02 to the contrary, payment of any Monthly Draw Request is subject to the FCRHA's right to Basic Retainage and Completion Retainage as set forth in below.
- D. Remittance. If and when the FCRHA approves all or part of a Monthly Draw Request, it will remit the approved amount, less Basic Retainage and Completion Retainage, to Developer (the "**Remittance**").
- E. The FCRHA shall have no obligation to make a Remittance at any time Developer is in default under the terms of this Agreement. The FCRHA shall have no obligation to make any further Remittances if an Event of Default (as defined in Section 4.03) occurs that is not cured during any applicable cure period after the giving of any required notice of default.
- F. Basic Retainage. The FCRHA shall withhold from each payment of a Monthly Draw Request an amount equal to five percent (5%) of such requested payment (the "**Basic Retainage**"). The Basic Retainage shall be held by the FCRHA during the development



and construction of the Site Work and the 94 Project and shall either be paid to Developer or returned to the FCRHA in accordance with the terms of this Agreement. The Basic Retainage will be fully earned and paid to Developer after Developer completes all of the following: (1) Terracon (or its successor) has provided a Final Report of Special Inspection regarding the retaining walls for the Multifamily Site and the remaining Site Work to Land Development Services (“LDS”), and LDS has approved such reports; and (2) Developer has provided as-built drawings of the Site Work and the 94 Project to the FCRHA.

- G. Completion Retainage. Of the maximum Loan amount of \$4,251,739, the FCRHA will pay up to \$4,182,255 upon receipt and approval of Monthly Draw Requests, in accordance with and subject to the terms of this Agreement. The FCRHA will pay the final \$69,484 (“**Completion Retainage**”) when Developer has leased at least 85 units of the 94 Project to households satisfying the affordability requirements of the 94 Ground Lease (“**Final Completion**”).

### **ARTICLE III.**

#### **Covenants, Duties and Obligations During Development**

**Section 3.01 General Performance.** Once Developer starts construction of the Site Work, Developer shall diligently pursue and continue construction efforts until the 94 Project is complete. Developer shall supervise, direct, and coordinate the performance of construction of the Site Work and the 94 Project using its best skill and attention. Developer acknowledges that Developer shall be solely responsible for all construction methods, techniques, and procedures employed by Developer, its agents, contractors and subcontractors in connection with the performance and construction of the Work, provided, however, in the event of any disputes regarding construction methods, techniques and procedures, the foregoing shall not be deemed to prevent Developer from joining any of its agents, contractors or subcontractors in any resulting litigation to the extent Developer determines that such joinder is required in order for Developer to retain its rights against any such agents, contractors or subcontractors. Developer shall cause the Site Work to be designed and constructed in a good and workmanlike manner, and in compliance with all applicable laws, licensing requirements, and governmental approvals, including, without limitation, the Land Use Approvals and the Proffers, and to produce fully connected, complete, operational and functional systems such that the Affordable Housing Units are fully able to be constructed prior to and without full development of the Townhome Tract and/or the Park Tract.

**Section 3.02 Contractors.**

- A. Developer shall be responsible for the evaluation and recommendation of, and coordination, administration, monitoring and management of, a general contractor for the Site Work (the “**General Contractor**”) and its subcontractors, and any other contractors engaged to perform services in connection with the construction and development of the Site Work, in accordance with the terms of this Agreement. Developer shall consult with the FCRHA on such matters.
- B. Final selection by Developer of a General Contractor and Major Subcontractors for the Site Work shall be subject to the prior approval of the FCRHA, which approval shall not be unreasonably withheld, conditioned, or delayed.

1. “**Major Subcontractors**” means (a) each contractor or subcontractor whose scope exceeds ten percent (10%) of the Site Work Budget total, as well as (b) the contractors or subcontractors responsible for the performance and/or construction of the following portions of the Site Work: grading, utilities, and retaining walls.
  2. With the of exception the (sub)contractor responsible for the construction of the retaining walls, the Developer shall bid or cause to be bid the scope for each Major Subcontractor contract out to at least 3 bidders. Developer and the General Contractor shall share the results of such bids with the FCRHA and shall select the Major Subcontractor on the basis of best value.
- C. Additionally, the FCRHA shall have the right to approve the contract (the “**Site Work Contract**”) between the Developer and the General Contractor for the construction and development of the Site Work. Developer shall ensure that the Site Work Contract includes the provisions set forth in Section 11.12 of the 94 Ground Lease.
- D. Developer may not modify the Site Work Contract (including the Plans) or approve any change orders without prior approval of the FCRHA, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, change orders that meet each of the following requirements shall not require the consent of the FCRHA: (1) the change order amount does not exceed \$50,000, nor when combined with all prior change order does it exceed \$250,000 in the aggregate (in both cases, whether the figure represents an increase or decrease in contract amount), (2) the change order does not result in a material change to the design or the structural components of the Improvements, and (3) the change order has been approved by all applicable governmental authorities, if the approval of such governmental authorities is required. If the FCRHA approves a change order, such approval will not increase the amount of the Loan or otherwise entitle Developer to additional funds from the FCRHA.
- E. In each case where Developer is required to obtain the FCRHA’s approval pursuant to this Section 3.02, Developer shall request such approval in writing. The FCRHA shall, within ten (10) business days after its receipt of each such request from Developer, notify Developer in writing of the FCRHA’s approval or disapproval of such request. If the FCRHA disapproves any such request, the FCRHA’s notice to Developer shall set forth in reasonable detail the reasons for such disapproval. If the FCRHA fails to notify Developer in writing of either its approval or disapproval of any such request within ten (10) business days after its receipt of such request, then such submission shall be deemed approved by the FCRHA.

### **Section 3.03 Project Manager.**

- A. Developer, at its sole expense, will hire a one or more project managers who each live in the Washington, D.C. metropolitan area and have experience managing new construction projects located in Fairfax County (collectively, “**Project Manager**”) within fifteen (15) days of the Agreement Date. The Developer’s proposed Project Manager is subject to the approval of the FCRHA, not to be unreasonably withheld, conditioned, or delayed.

- B. Developer shall retain the Project Manager through the Site Work Milestone. Except in reasonably exigent circumstances, Developer may not terminate a Project Manager unless Developer first provides the FCRHA with at least five (5) business days' prior written notice. If Developer terminates a Project Manager, Developer must hire (and obtain FCRHA approval of) a new Project Manager within ten (10) days of the date that the prior Project Manager was terminated.
- C. The Project Manager will perform the tasks set forth on **Exhibit L**. The costs of engaging the Project Manager are not reimbursable with Loan proceeds.

**Section 3.04 FCRHA Inspection Rights.**

- A. The FCRHA and its agents shall upon no less than forty-eight hours prior written notice to Developer have the following rights, each of which can be exercised at any reasonable time or times: (i) the right of entry and free access to the 94 Premises and the right to inspect all work done, labor performed, and materials furnished with respect to the Site Work; (ii) the right to enter upon the 94 Premises and to conduct such commercially reasonable investigations, inspections, and tests as the FCRHA reasonably deems appropriate to ensure the continued compliance of Developer and of the Site Work with the requirements of this Agreement and with all applicable legal requirements.
- B. If the FCRHA or its inspectors reasonably determine that any work or materials do not conform to the Plans or the Site Work Contract (subject to modifications as permitted herein), or sound building practices or otherwise depart from any of the requirements of this Agreement, the FCRHA may require the work to be stopped and may suspend payments under any Monthly Draw Request until the matter is corrected. Developer will promptly correct the work to the FCRHA's reasonable satisfaction. No such action by the FCRHA will affect Developer's obligation to meet each of the Milestones.

**Section 3.05 Bonding.** Before Developer begins construction of the Site Work, Developer will obtain or cause the General Contractor to obtain payment and performance bonds for 100% of the value of the Site Work Contract. The FCRHA must be named as a co-obligee or dual obligee on any such bonds. If Developer's first-position lender also requires 100% payment and performance bonds for the 94 Project, the FCRHA may be named as a co-obligee or dual obligee on that bond in satisfaction of the requirements of this Section 3.05. Developer may propose a separate alternative to the 100% payment and performance bond requirement of this Section 3.05, subject to the approval of the FCRHA in its sole discretion.

**Section 3.06 Community Development Block Grant Program Compliance.**

- A. Developer will comply with, and will ensure that the construction of the Site Work complies with, all CDBG program laws, rules, and regulations, including, without limitation, those set forth on **Exhibit M** to this Agreement, which is incorporated into this Agreement by this reference.
- B. If HUD requires repayment of any Loan proceeds to HUD and/or to the FCRHA's CDBG program due to or in connection with any breach by Developer (or its employees or

contractors) of this Agreement, then Developer shall pay such amount to the FCRHA within thirty (30) days of written notice from the FCRHA.

**Section 3.07 Insurance.** Developer will carry (or cause the General Contractor to carry, as applicable) insurance coverage of the kinds and amounts specified in the 94 Ground Lease and will otherwise comply with the insurance requirements of the 94 Ground Lease, including, without limitation, Article 7 and Exhibit D to the Ground Lease.

**Section 3.08 Indemnity.**

- A. Developer shall indemnify, defend, and hold harmless the FCRHA, together with its employees, staff, commissioners, officers, directors, agents, consultants, attorneys, successors, and assigns, to the full extent permitted by law from and against any and all liabilities, losses, claims, costs, damages, and expenses (including, without limitation, attorneys' fees, costs, and expenses) arising from, or in connection with, any act or failure to act by Developer which results from: (a) the negligence, fraud, or willful misconduct of Developer; (b) any breach by Developer of the terms of this Agreement; or (c) acts by Developer outside the scope of authority granted under this Agreement.
- B. The obligations of Developer under this Section 3.08 shall not be affected in any way by the absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under insurance policies affecting the Site Work or the 94 Premises; provided, however, Developer shall be relieved of its aforesaid obligation of indemnity to the extent of the amount actually recovered from one or more of the insurance carriers of either Developer or the FCRHA (or other indemnitees as listed in this Section 3.08), and (a) paid to the FCRHA or other indemnitee, or (b) paid for the FCRHA's or other indemnitee's benefit in reduction of any such liability, penalties, damage, expense, or charges imposed upon the FCRHA or other indemnitee, as applicable.

**Section 3.09 Reports.** Developer shall prepare and deliver regular reports to the FCRHA regarding the progress of Developer's efforts to complete the design, construction and development of the Site Work in accordance with this Agreement, the Plans, and the Budget, including any deviations from or proposed changes to any of the foregoing. The reports shall be prepared on a quarterly basis prior to Closing and on a monthly basis after Closing. The FCRHA acknowledges that the reports may contain and be based upon information provided by third parties, such as Developer's architect and contractor(s). Developer shall schedule with the FCRHA regular meetings (not less than monthly) to review and discuss such reports and any other issues related to the Development Approvals and the design, construction and development of the Work that has occurred since the distribution of such reports.

**Section 3.10 Books and Records; Right to Audit.** Developer shall keep, or cause to be kept, accurate, full and complete books of account on a calendar year basis showing assets, liabilities, income, operations, transactions and the financial condition of Developer for the design and construction of the Affordable Housing Units and the Site Work. The books, accounts, and records of Developer for the Affordable Housing Units and the Site Work shall be at all times maintained at Developer's principal office and shall at all reasonable times and upon prior reasonable notice be accessible to the FCRHA at such office. Developer shall maintain the books and records for a

period of three (3) years after expiration or termination of this Agreement. Upon ten (10) days' prior notice to Developer, the FCRHA may, at its option and at its own expense, conduct audits of the books, records, and accounts of Developer related to the Affordable Housing Units and the Site Work, but not more than two times per calendar year. Developer shall provide the FCRHA's appraisers, accountants, and advisors with access to all of its information related to the design, development, and construction of the Affordable Housing Units and the Site Work. The FCRHA shall promptly reimburse Developer for any costs, including costs it must expend for consultants (e.g. accountants) to accommodate such audits or inspections by or at the request of the FCRHA under this Section. Developer shall cause its architect(s), General Contractor, and Major Subcontractors under their respective Affordable Housing Units and Site Work contracts to make their books and records with respect to the Affordable Housing Units and Site Work available to the FCRHA and the FCRHA's third party representatives (if any), for their review in a manner consistent with this Section.

#### **ARTICLE IV.**

#### **Termination; Defaults; Remedies**

**Section 4.01 Termination for Convenience.** After consideration, the Parties have elected not to include a right of the FCRHA to terminate this Agreement for convenience. Nothing in this Section 4.01 abrogates or otherwise limits the FCRHA's rights under other provisions of this Agreement.

**Section 4.02 Termination – End of Year.** If the Townhome Tract has not been conveyed pursuant to the Townhome Purchase Contract by December 31, 2019, then the FCRHA may terminate this Agreement upon written notice to the Developer. Upon such termination, neither party will have any further obligation under this Agreement to the other.

**Section 4.03 Default by Developer.**

- A. Event of Default. As used in this Agreement, each of the following shall constitute an “**Event of Default**”:
1. a termination of the 94 Ground Lease caused by any action or inaction of the Developer or other Developer default under the 94 Ground Lease; or
  2. following initial occupancy of the 94 Project, Developer fails to operate the 94 Project as affordable housing in accordance with the 94 Ground Lease; or
  3. Developer is shown to have committed fraud in connection with any aspect of the negotiation of this Agreement or the construction and development of the 94 Project; or
  4. gross negligence or willful misconduct by Developer against the FCRHA in connection with construction and development of the 94 Project; or
  5. misappropriation of funds by Developer from the construction and development of the Site Work; or

6. Developer assigns, directly or indirectly, whether voluntarily, involuntarily or by operation of law, any of its rights or obligations under this Agreement without the prior consent of the FCRHA, provided, however, this clause is only applicable to the extent the FCRHA's prior consent to such assignment is expressly required pursuant to the terms of Article VI; or
  7. Developer commences any voluntary case in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereinafter enacted or amended, and, as a result thereof, Developer suspends construction and development of the Site Work or the 94 Project for a period in excess of ninety (90) days; or
  8. any petition in bankruptcy, insolvency or similar proceeding under any federal or state insolvency or debtor-relief law, whether now existing or hereafter enacted or amended, shall be filed against Developer seeking reorganization, liquidation or appointment of a receiver, trustee or liquidator for all or substantially all of the assets of Developer, and such petition has not been dismissed within ninety (90) days after the filing thereof; or
  9. failure to meet a Milestone; or
  10. prior to the termination of the Guaranty in accordance with its terms, a material, negative change in the financial condition of a Guarantor (which, for purposes of this Section 4.03.A.10 shall not be deemed to have occurred if the Guarantor is also a guarantor for a lender with a superior lien on the 94 Ground Lease and such Guarantor is not in violation of any financial covenants imposed on such Guarantor by any such lender), which (a) is not resolved within ninety (90) days after receipt by Developer of a Default Notice from the FCRHA; or (b) Developer has not provided a substitute Guarantor, which has been approved by the FCRHA in its sole, but reasonable, discretion, within ninety (90) days after receipt by Developer of a Default Notice from the FCRHA; provided, however, that if the Guaranty terminates prior to cure by the Guarantor of such material, negative change in accordance with the terms of this Section 4.03.A.10, and subject to Section 4.03.C.4, such material, negative change will cease to be an Event of Default; or
  11. Developer materially breaches any other term of this Agreement within thirty (30) days after receipt of a Default Notice from the FCRHA regarding such breach (which period may be extended for an additional period of time as is necessary if such breach is of a nature that it is not reasonably capable of being cured within such period, but Developer, has commenced its cure efforts within such thirty (30) day period and is diligently pursuing completion of those cure efforts).
- B. Notice; Right to Cure Event of Default; Obligations of the FCRHA. If an Event of Default has occurred, the FCRHA shall send written notice of such Event of Default to Developer (a "**Default Notice**"). Developer must cure such Event of Default within thirty (30) days after receipt of the Default Notice (or, if the Event of Default cannot reasonably be cured within such 30-day period, then within such longer period of time as reasonably agreed by

the FCRHA, so long as Developer commences cure efforts within such 30-day period and diligently pursues completion of those efforts). Any member of Developer may cure an Event of Default but has no obligation to do so; any such cure will be accepted or rejected as if offered by Developer.

- C. Remedies. After an Event of Default and the expiration of the applicable notice and cure period, then the FCRHA may pursue any one or more of the following remedies, together with any other remedies available under this Agreement, the Note, the Deed of Trust, or at law or equity.
1. Termination for Event of Default. The FCRHA may terminate this Agreement by sending written notice to the Developer. If the FCRHA so terminates this Agreement, then the FCRHA will have no obligation to provide Developer with any further Loan proceeds (including any Basic Retainage and Completion Retainage) after the date of termination.
  2. Repayment of Loan. The FCRHA may require immediate repayment of the Loan without further demand and may invoke the power of sale of the 94 Premises and 94 Project pursuant to the terms of the Deed of Trust. If Developer then fails to repay the Loan, the FCRHA may declare the Note to be due and payable, whether or not the FCRHA has initiated any foreclosure or other action for the enforcement of the Loan Documents, whereupon the Note will become immediately due and payable, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Developer, and the FCRHA may commence foreclosure proceedings in accordance with the terms of the Deed of Trust.
  3. Specific Performance. The FCRHA may seek specific performance of the Developer's obligations under this Agreement.
  4. Right to Cure Event of Default. Without waiving or releasing any obligation contained in this Agreement, the FCRHA may (but shall be under no obligation to) perform such obligation on Developer's behalf to cure an Event of Default (provided such Event of Default can be cured by payment or performance). Nothing in this Section 4.03.C or elsewhere in this Agreement shall imply any duty upon the part of the FCRHA to do anything required to cure an Event of Default and any performance by the FCRHA shall not constitute a waiver of an Event of Default. The FCRHA shall not be liable for any damage to Developer resulting from the FCRHA's exercise of its rights hereunder, and the obligations of Developer under this Agreement shall not be affected thereby. All reasonable sums paid by the FCRHA and all reasonable costs and expenses incurred by the FCRHA in connection with its performance hereunder, together with interest thereon at the lesser of: (a) twelve percent (12%) per annum, compounded monthly, or (b) the highest interest rate permitted by Virginia law for commercial loans shall be paid by Developer, to the FCRHA within ten (10) days after the FCRHA shall have submitted to Developer, as applicable, a statement, in reasonable detail, substantiating the amount demanded by the FCRHA.

5. Guaranty. The FCRHA may exercise any of its rights against a Guarantor under a Guaranty.
- D. Remedies Cumulative; No Waivers. The FCRHA's rights and remedies set forth in this Section 4.03 are cumulative and in addition to the FCRHA's other rights and remedies in this Agreement, at law, or in equity. The FCRHA's exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. The FCRHA's delay or failure to exercise or enforce any of the FCRHA's rights or remedies shall not constitute a waiver of any such rights or remedies. The FCRHA shall not be deemed to have waived any Event of Default unless such waiver expressly is set forth in an instrument signed by the FCRHA. If the FCRHA waives in writing any Event of Default, then such waiver shall not be construed as a waiver of any covenant or condition set forth in this Agreement except as to the specific circumstances described in such written waiver.
- E. Survival. The provisions of this Section 4.03 shall survive termination of this Agreement.

## **ARTICLE V.**

### **Assignment and Transfer**

**Section 5.01 Prohibition Against Transfer of this Agreement**. Neither party may assign or otherwise transfer this Agreement, or any of its rights and obligations hereunder, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Each of the following constitutes a "transfer" for purposes of this Article V and Section 8.12: (A) any merger or consolidation involving Developer, and (B) any sale, conveyance, or other transfer of any managing membership interest in Developer (or in a member of the managing member of the Developer). An assignment or transfer to an entity to whom the 94 Ground Lease may be transferred (in accordance with the terms of the 94 Ground Lease) is deemed reasonable and consent to such transfer is hereby given.

**Section 5.02 Effect of Transfer**. In the absence of a specific written release by the FCRHA, no assignment or other transfer by Developer of any of its rights and obligations hereunder, whether in whole or in part, shall be deemed to relieve Developer from any of their obligations specified in this Agreement or deprive the FCRHA of any of its rights and remedies under this Agreement and Developer shall be jointly and severally liable with any such assignee or transferee.

## **ARTICLE VI.**

### **Casualty and Condemnation**

**Section 6.01 Casualty**. After a casualty event, if Developer elects, in accordance with the 94 Ground Lease, not to repair or rebuild the 94 Premises, then Developer will repay the Loan. If Developer receives insurance proceeds in connection with such casualty event, then Developer will apply such proceeds toward repayment of the Loan after Developer first repays any lenders with superior liens recorded against the 94 Ground Lease.

**Section 6.02 Condemnation**. If all or substantially all of the 94 Premises are taken by condemnation (or by sale in lieu of condemnation), then Developer will repay the Loan. If Developer receives proceeds from such condemnation or sale in lieu thereof, then Developer will



apply such proceeds toward repayments of the Loan after Developer first repays any lenders with superior liens recorded against the 94 Ground Lease.

**ARTICLE VII.**  
**Representations and Warranties**

**Section 7.01 Representations by Developer.** Developer hereby makes the following representations and warranties to the FCRHA, each of which is true and correct as of the Agreement Date and, to the extent applicable on the date of Closing, and shall be true and correct in all material respects as of the date of Closing:

- A. Authority, Authorizations, and Consents. Developer is a Virginia limited liability company. Developer 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 Developer have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Developer in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of Developer, enforceable in accordance with its 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 Developer or the performance of any of Developer's obligations hereunder. In the event that Developer assigns this Agreement (in accordance with its terms) to another entity acting as the developer hereunder, such entity shall make the same (but corrected, as necessary) representations set forth in this Section 7.01 as of the date of Closing.
- B. No Violations. The execution and delivery of this Agreement by Developer, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of Developer'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 shall 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. There is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to Developer's knowledge, threatened against or affecting any of the transactions contemplated by this Agreement.

**Section 7.02 Representations by the FCRHA.** The FCRHA hereby makes the following representations and warranties to Developer, each of which is true and correct as of the date hereof and, to the extent applicable on the date of Closing, and shall be true and correct in all material respects as of the date of Closing:

- A. Authority, Authorization, and Consents. The FCRHA is a political subdivision of the Commonwealth of Virginia. The 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 the

FCRHA in order to consummate the transactions contemplated herein. This Agreement is a legal, valid and binding obligation of the FCRHA, enforceable in accordance with its terms. The 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 the FCRHA or the performance of any of the FCRHA's obligations hereunder.

- B. **No Violation.** The execution and delivery of this Agreement by the FCRHA, and the performance of its obligations hereunder, do not (i) violate, or conflict with any of the 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 shall 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.

**Section 7.03 Changes to Representations.** Each party hereto shall be required to notify the other in writing within ten (10) business days of the date that such party acquires actual knowledge that any of the above representations and warranties become untrue.

**ARTICLE VIII.**  
**Miscellaneous**

**Section 8.01 Recitals.** The recitals to this Agreement are true and correct and are incorporated into this Agreement by reference.

**Section 8.02 Modification / Amendment.** The terms of this Agreement may be amended or otherwise modified only by a written instrument duly executed by the parties.

**Section 8.03 Notice.**

- A. All notices, demands, other communications between the Parties ("**Notice**") must be in writing. Notice must be given by (i) personal delivery or (ii) a nationally-recognized, next-day courier service that provides a signed receipt evidencing delivery, addressed as follows:

If to the FCRHA:	Fairfax County Redevelopment and Housing Authority 3700 Pender Drive Fairfax, Virginia 22030 Attention: Director, HCD
------------------	---

With copies to:	Office of the County Attorney 12000 Government Center Parkway, Suite 549 Fairfax, Virginia 22035-0064 Attention: County Attorney
-----------------	---

If to Developer:	c/o Community Housing Partners Corporation
------------------	--

448 NE Depot Street  
Christiansburg, VA 24073  
Attn: Jeffrey Reed

With a copy to:

Williams Mullen  
200 South 10th Street  
Suite 1600  
Richmond, VA 23219  
Attn: Lauren Nowlin

Pennrose Properties, LLC  
1301 N. 31st Street  
Philadelphia, PA 19131

Berman Indictor LLP  
30 North 41st Street – Suite 450  
Philadelphia, PA 19104  
Attn: Steven P. Berman

Klein Hornig LLP  
1325 G Street NW  
Washington, DC 20005  
Attn: Chris Hornig

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the party to which it is given pursuant to one of the delivery methods described in subsection (a) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

**Section 8.04 Binding on Successors and Assigns.** This Agreement shall be binding upon and, subject to the provisions of Section 5.01, shall inure to the benefit of, the successors and assigns of the Parties, and where the term “the FCRHA” or “Developer” is used in this Agreement, it shall mean and include such entity’s respective successors and assigns, subject to the terms and conditions of Section 5.01.

**Section 8.05 Governing Law.** 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. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located

in the County of Fairfax, Virginia or U.S. District Court for the Eastern District of Virginia, Alexandria Division.

**Section 8.06 Interpretation.** Should any provision of this Agreement require judicial interpretation, the Parties hereby agree and stipulate that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of any rule or conclusion of law that a document should be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.

**Section 8.07 Waivers.** The Parties shall have the right by notice in writing to the other Parties to waive any of the provisions of this Agreement that are for the sole benefit of the waiving party. No failure of a party to insist upon strict compliance with any of the terms and conditions of this Agreement shall be construed as a waiver of such terms and conditions or of the right of such party to insist at any time thereafter upon such strict compliance.

**Section 8.08 Counterparts.** This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

**Section 8.09 Severability.** If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.

**Section 8.10 Dates for Performance.** If the expiration of any time period set forth in this Agreement shall fall on a Saturday, Sunday or legal holiday in the Commonwealth of Virginia, such period shall be automatically extended to the next business day. All dates for performance (including cure) shall expire at 5:00 p.m. on the performance or cure date.

**Section 8.11 Headings.** The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement

**Section 8.12 Transfer of Title.** This Agreement shall not be construed or considered to transfer any title to any portion of the North Hill Property, legal or equitable.

**Section 8.13 Rights, Easements and Licenses.** No rights, easements, or licenses are acquired by Developer under this Agreement by implication or otherwise except as and unless expressly set forth in this Agreement.

**Section 8.14 Rules of Construction.**

A. The words “herein,” “hereof,” “hereby,” “hereunder” and words of similar import shall be construed to refer to this Agreement as a whole and not to any particular Article or Section thereof unless expressly so stated.

- B. When a reference is made in this Agreement to an Article, a Section, an Exhibit, or a Schedule, such reference is to an Article of, a Section of, or an Exhibit or a Schedule to this Agreement unless otherwise indicated.
- C. Whenever the words “include,” “includes,” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”
- D. The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and neuter genders and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.

**Section 8.15 Recordation.** This Agreement may not be recorded by any party hereto at any time.

**Section 8.16 Third Parties.** NO PERSON SHALL BE DEEMED TO BE A THIRD PARTY BENEFICIARY OF THIS AGREEMENT OR ANY PORTION HEREOF.

**Section 8.17 Jury Trial.** EACH PARTY WAIVES ALL RIGHTS TO A TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING, OR COUNTERCLAIM ARISING OUT OR OF IN ANY WAY CONNECTED WITH THIS AGREEMENT.

**Section 8.18 No Special Etc. Damages.** Notwithstanding anything in this Agreement to the contrary, no party to this Agreement will have any liability pursuant to this Agreement for special, indirect, consequential, or punitive damages.

**Section 8.19 Estoppel Certificate.** Upon request of any other party, a party shall, within ten (10) business days following such request, execute and deliver to the requesting party a written statement in which the responding party shall certify that this Agreement is in full force and effect (if true); that this Agreement has not been modified or amended (or stating all such modifications and amendments); that no party has been declared in default under this Agreement (or setting forth any such defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any party, or any duty or obligation of the responding party (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting party shall reasonably request.

**Section 8.20 Time of Essence.** Time is of the essence with respect to all obligations of the Parties.

[SIGNATURE PAGE FOLLOWS]

[Signature page to Development and Loan Agreement]

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

**FCRHA:**

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

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

[Signature Pages Follow]

[Signature page to Development and Loan Agreement]

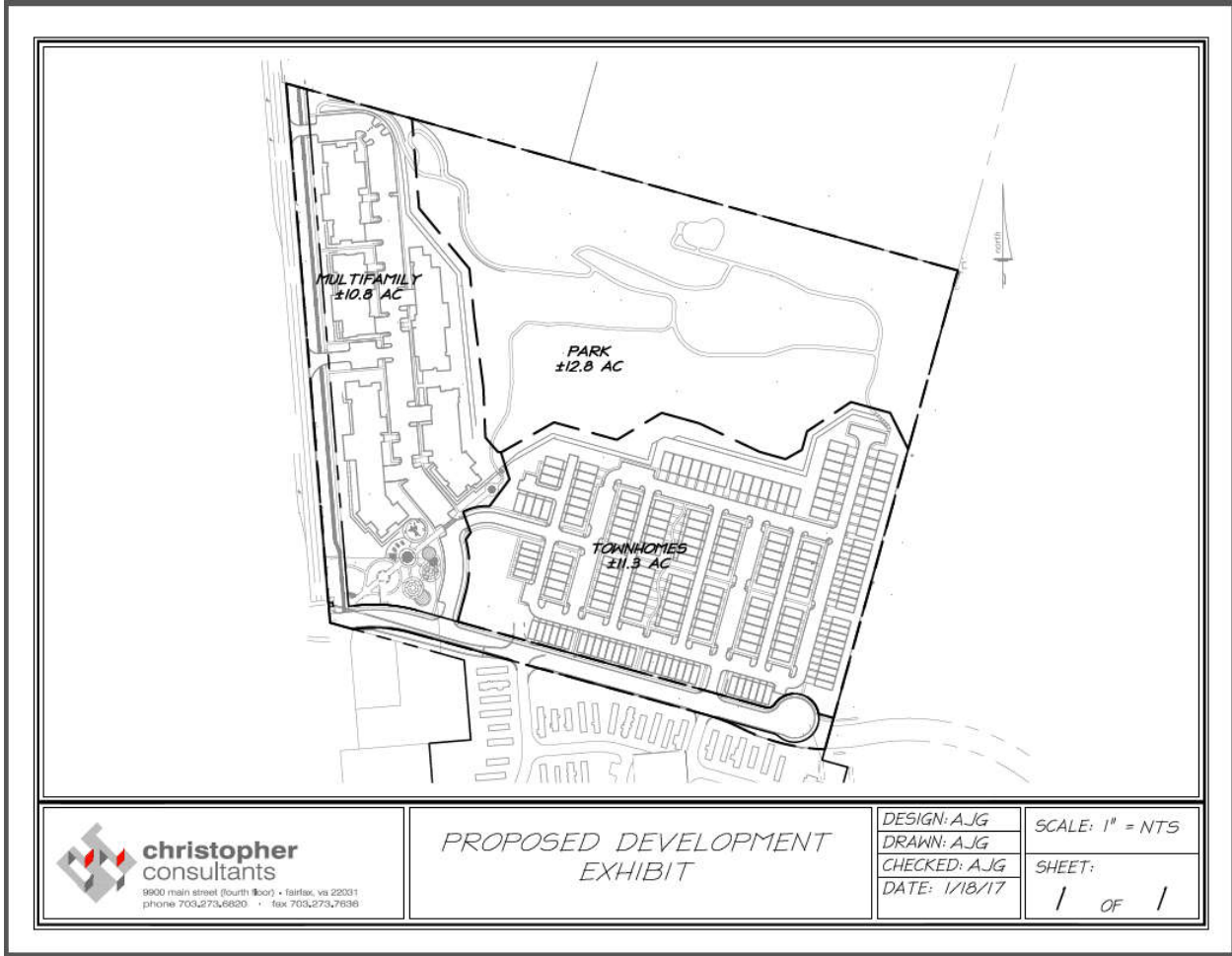
**DEVELOPER:**

**THE RESIDENCES AT NORTH HILL BOND 94, LLC**, a Virginia limited liability company

By: [signature block to be added]

**Exhibit A**

**Description of the North Hill Property**

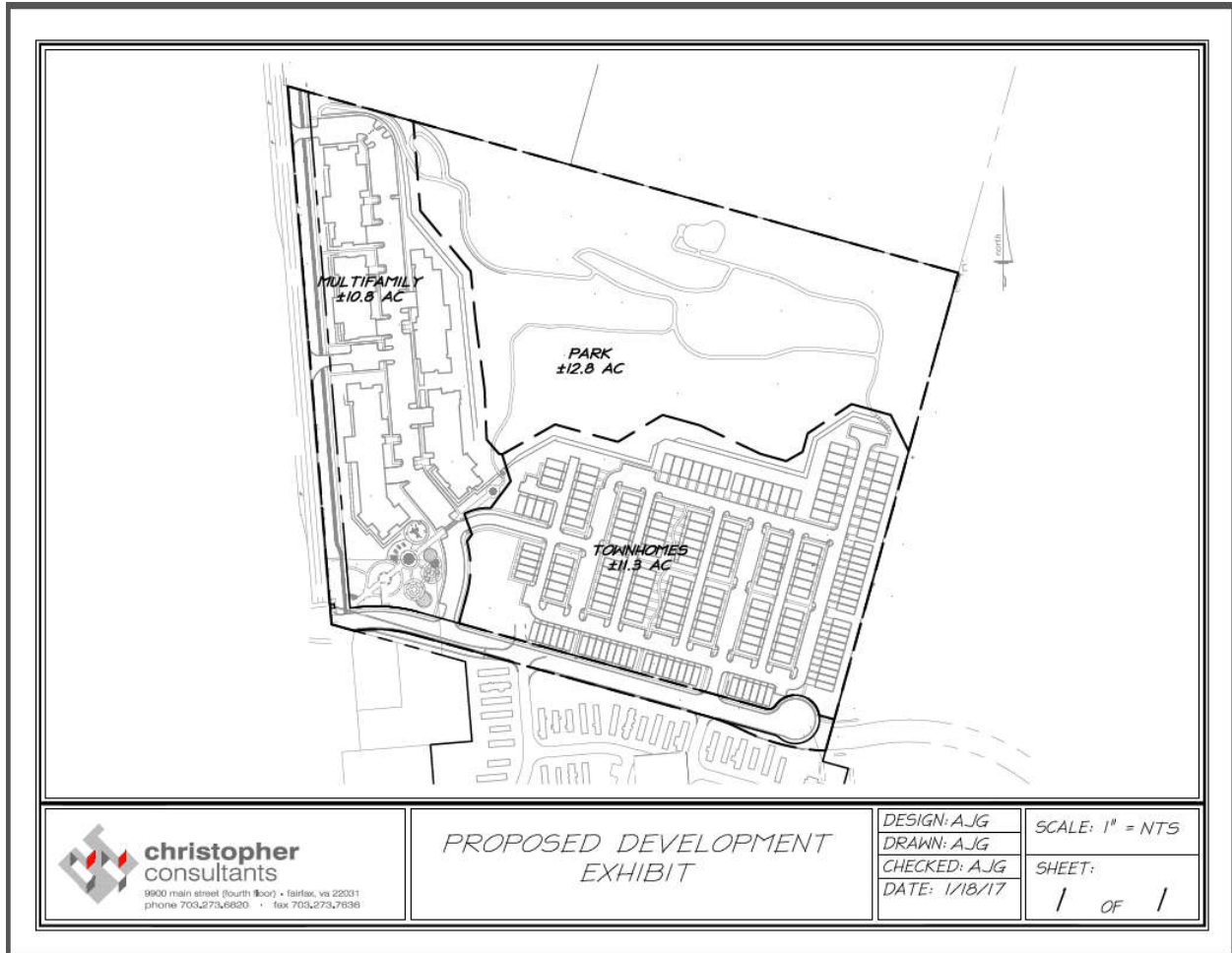




## Exhibit B

### Description of the Multifamily Site

The Multifamily Site is that portion of the North Hill Property depicted below as “Multifamily.”



9900 main street (fourth floor) • Fairfax, VA 22031  
phone 703.273.6820 • fax 703.273.7636

PROPOSED DEVELOPMENT  
EXHIBIT

DESIGN: AJG  
DRAWN: AJG  
CHECKED: AJG  
DATE: 1/18/17

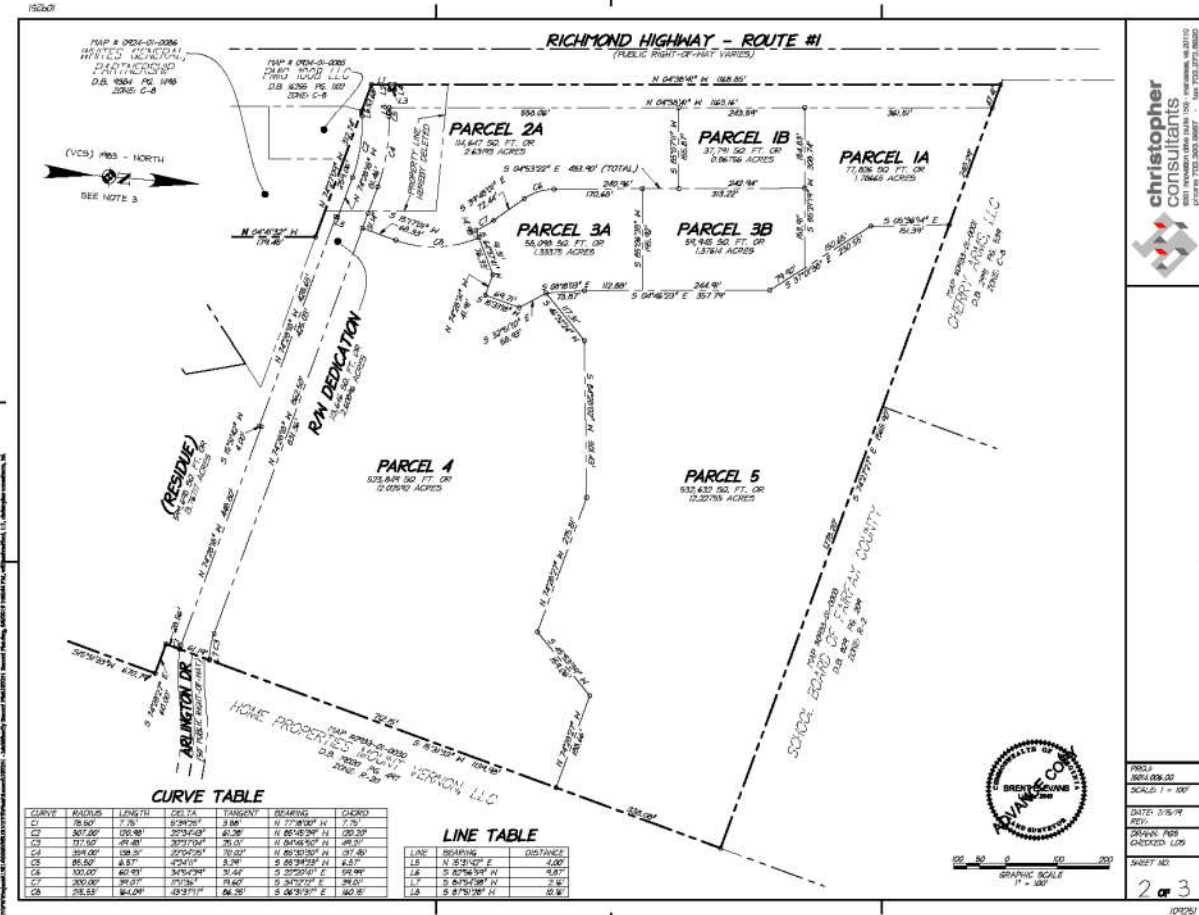
SCALE: 1" = NTS

SHEET:  
/ OF /

# Exhibit C

## Description of the 94 Premises

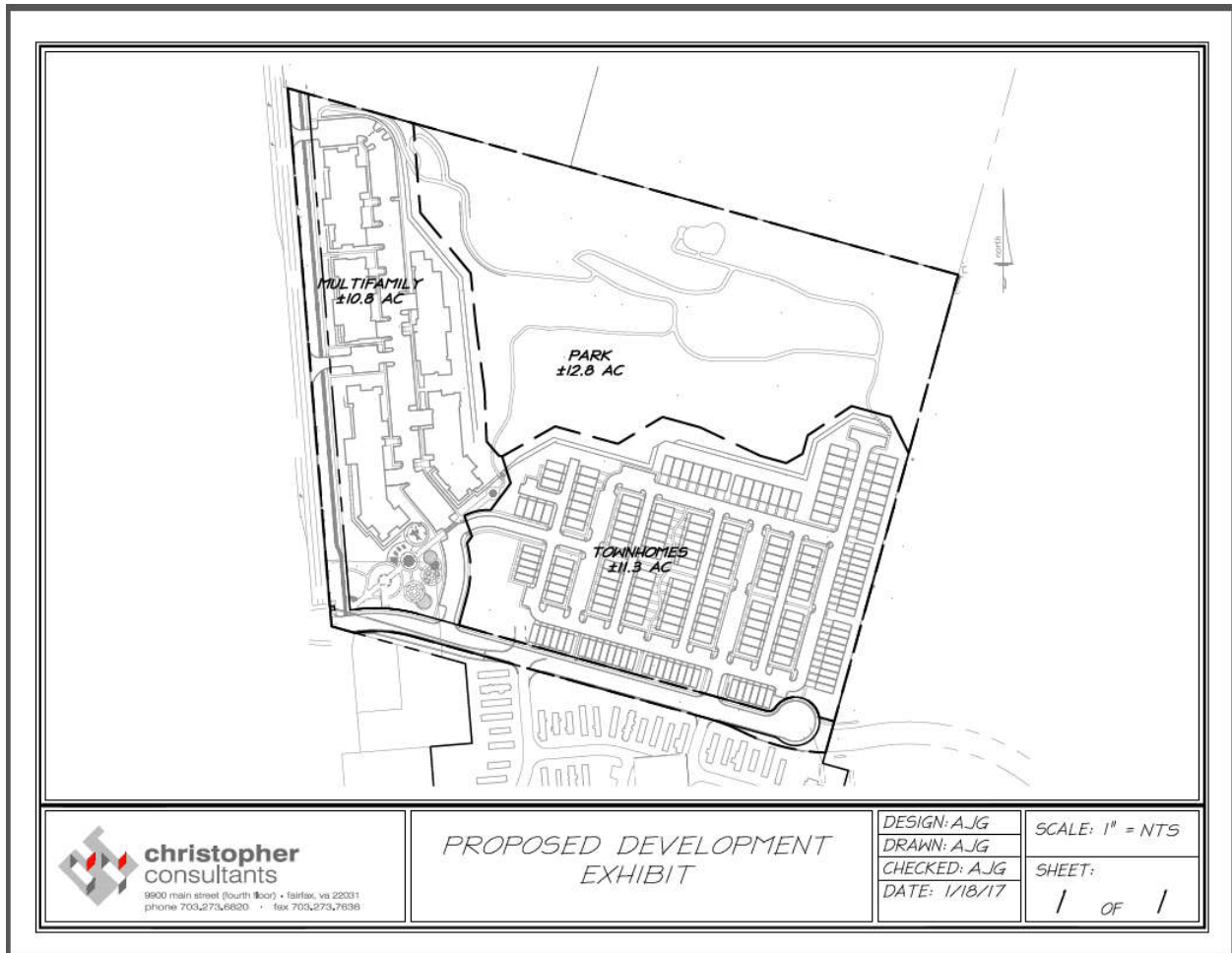
The 94 Premises are the portion of the North Hill Property depicted below as "Parcel 1B" and "Parcel 3A".



## Exhibit D

### Description of the Park Tract

The Park Tract is that portion of the North Hill Property depicted below as "Park."



## **Exhibit E**

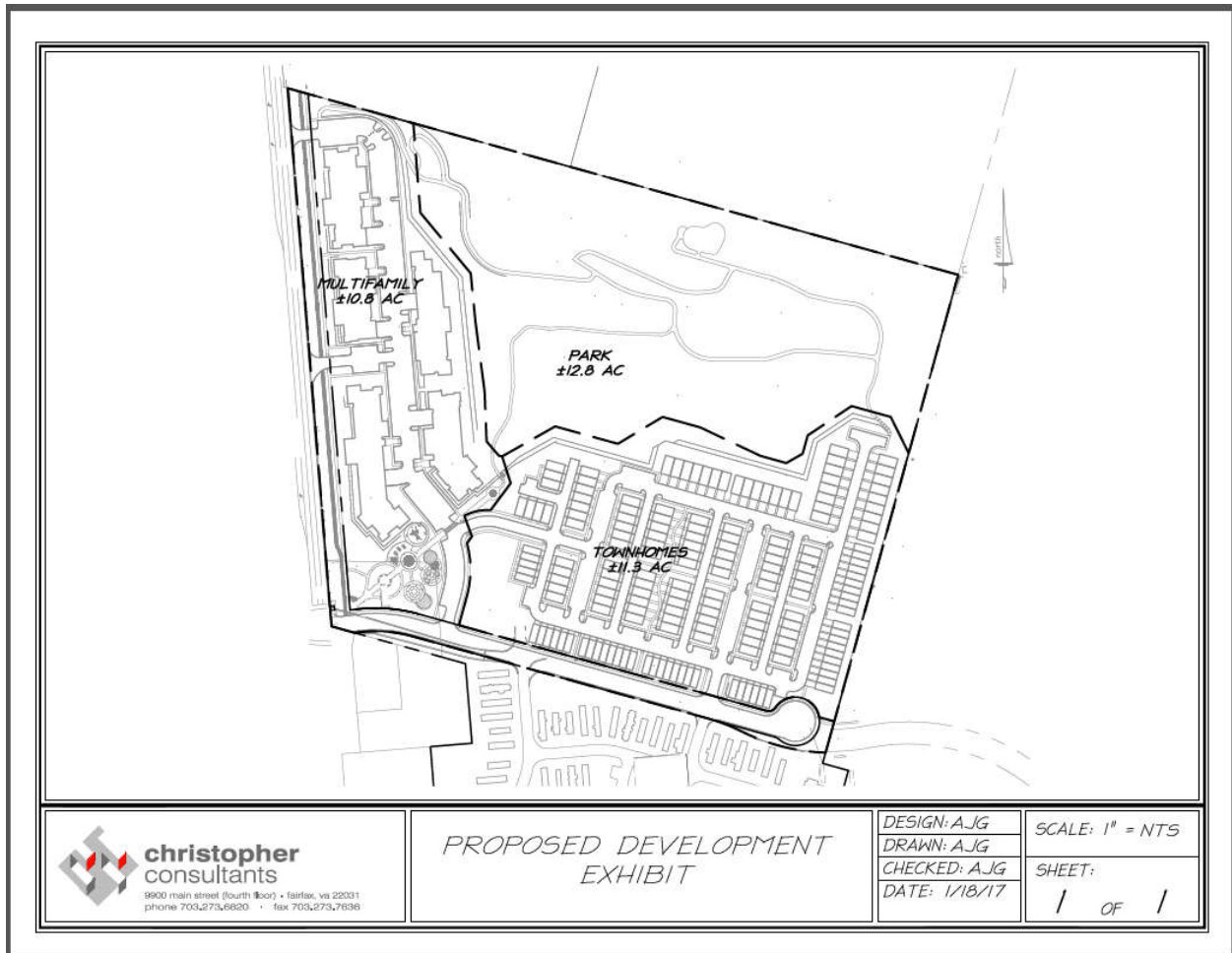
### **Description of the Developer Park Improvements**

1. All retaining walls described in the Land Use Approvals except for any retaining walls located on the Townhome Tract.
2. Curbs, gutters, sanitary sewer mains, manholes, service laterals to behind the curb and gutter, storm drains, and pavement and internal road network (except for roads located on the Townhome Tract).
3. Storm water management facilities, including outfall.
4. Additional utility rough-ins and connections work necessary for the preparation of the remainder of the Affordable Housing Units.
5. Improvements to Dart Drive, in accordance with VDOT requirements.
6. Frontage improvements along Route 1, in accordance with VDOT requirements.
7. A public plaza area at the intersection of Route 1 and Dart Drive.
8. The following improvements to or relating to the Park: the parking lot to be located in the northwest corner of the North Hill Property that will benefit the Park; a trail head to the Park from said parking lot capable of supporting construction equipment and allowing construction equipment to access the Park; certain access points to the Park per the Site Plan; a to-be-designed trailhead feature between the multifamily and townhome parcels; any storm water and/or drainage lines or facilities that are both necessary to handle storm water from the Park and located within the “critical area” adjacent to the retaining walls; and an accessible pathway between the trailhead feature and the trailhead adjacent to the Park parking lot.
9. Hauling off necessary soils (including all unsuitable materials), grading and other site work.

## Exhibit F

### Description of Townhome Tract

The Townhome Tract is the portion of the North Hill Property depicted below as "Townhomes."



**Exhibit G**

**Preliminary Plans**

The Preliminary Plans consist of the following sets of drawings, each prepared by christopher consultants and each attached to this Agreement:

North Hill Multifamily Site Plan, dated June 26, 2019, The Residences at North Hill 2, Project No. 15014.006.00, Sheets 1-17

North Hill Multifamily Site Plan, dated June 26, 2019, The Residences at North Hill Bond 47, Project No. 15014.006.00, Sheets 1-16

North Hill Multifamily Site Plan, dated June 26, 2019, The Residences at North Hill Bond 94, Project No. 15014.006.00, Sheets 1-17

North Hill Multifamily Site Plan, dated June 26, 2019, The Senior Residences at North Hill, Project No. 15014.006.00, Sheets 1-16

**Exhibit H**

**Preliminary Schedule**

[TO BE ATTACHED]

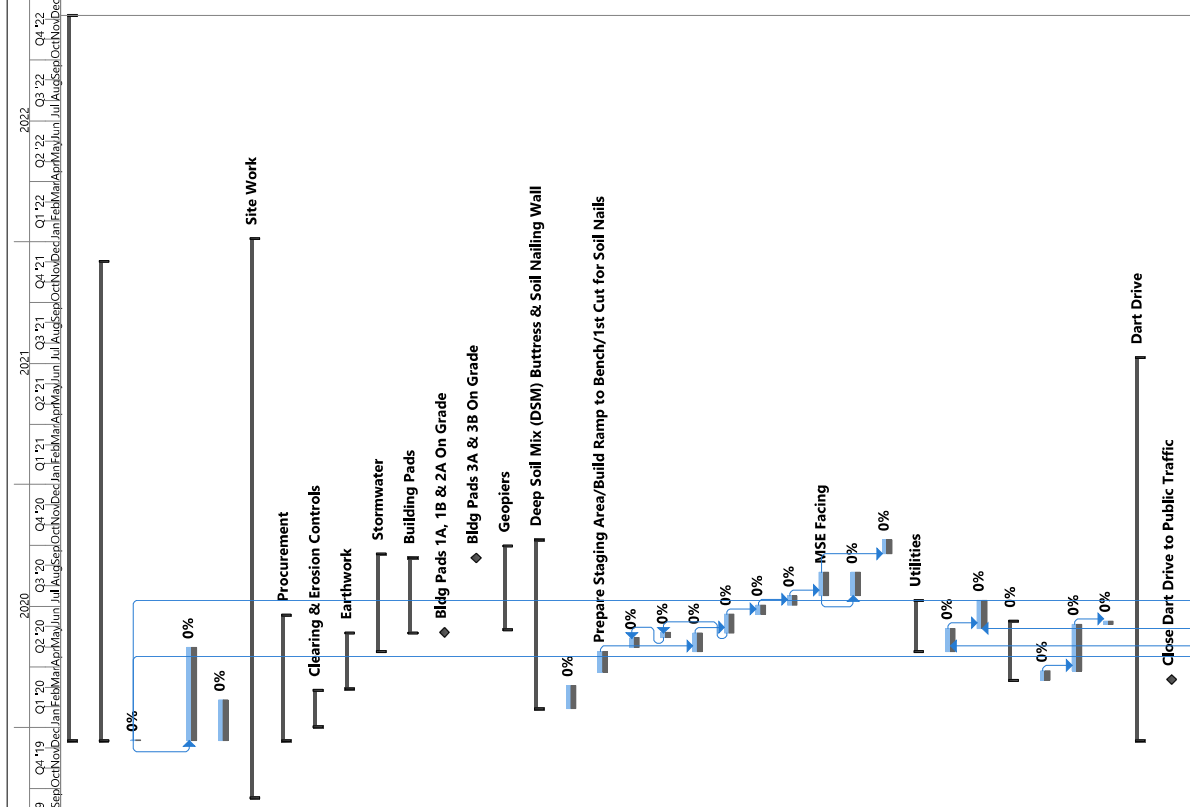
# Addendum Exhibit E - Construction Schedule



## NORTH HILL MULTI-FAMILY FAIRFAX COUNTY, VA PRELIMINARY PROJECT SCHEDULE

Breeden Construction  
4501 Marshall Run Circle  
Glen Allen, VA 23059

ID	Task Mode	Task Name	Duration	Start	Finish
1		North Hill Multi-Family			
2		Preconstruction	779 days	Thu 12/12/19	Tue 12/16/22
15		Recordation of Richmond Highway/Dart Drive Improvement Agreement	515 days	Thu 12/12/19	Wed 12/1/21
16		Building Permits	1 day	Thu 12/12/19	Thu 12/12/19
17		Site Retaining Wall Building Permit & Approvals	100 days	Thu 12/12/19	Wed 4/29/20
18		Site Work	43 days	Thu 12/12/19	Mon 2/10/20
19		Procurement	601 days	Tue 9/17/19	Tue 1/4/22
28		Clearing & Erosion Controls	135 days	Thu 12/12/19	Wed 6/17/20
37		Earthwork	39 days	Thu 1/2/20	Tue 2/25/20
39		Stormwater	60 days	Fri 2/28/20	Thu 5/21/20
44		Building Pads	105 days	Fri 4/24/20	Thu 9/17/20
45		Bldg Pads 1A, 1B & 2A On Grade	81 days	Fri 5/22/20	Fri 9/11/20
46		Bldg Pads 3A & 3B On Grade	1 day	Fri 5/22/20	Fri 5/22/20
47		Geopiers	1 day	Fri 9/11/20	Fri 9/11/20
50		Deep Soil Mix (DSM) Buttress & Soil Nailing Wall	90 days	Wed 5/27/20	Tue 9/29/20
51		Planning Phase	182 days	Wed 1/29/20	Thu 10/8/20
52		Prepare Staging Area/Build Ramp to Bench/1st Cut for Soil Nails	25 days	Wed 1/29/20	Tue 3/3/20
53		Mobilization & Slurry Plant Setup	23 days	Tue 3/24/20	Thu 4/23/20
54		Method Panel Installation & Testing	10 days	Thu 4/30/20	Thu 5/14/20
55		Soil Nailing/Shotcrete Temp Facing - Rows 1 - 3 (Rig #1/Crew #1)	5 days	Fri 5/15/20	Fri 5/22/20
56		Deep Soil Mixing (Separate Rig & Crew from Soil Nailing)	20 days	Fri 4/24/20	Thu 5/21/20
57		Soil Nailing/Shotcrete Temp Facing - Row 4 (Rig #2/Crew #2)	20 days	Fri 5/22/20	Thu 6/18/20
58		Shotcrete Perm Facing	10 days	Fri 6/19/20	Thu 7/2/20
59		MSE Facing	10 days	Fri 7/3/20	Thu 7/16/20
60		Alternative Wall System	25 days	Fri 7/17/20	Thu 8/20/20
61		Planter Wall	25 days	Fri 7/17/20	Thu 8/20/20
62		Utilities	15 days	Fri 9/18/20	Thu 10/8/20
63		Sewer Main	55 days	Fri 4/24/20	Thu 7/9/20
64		Water Main	25 days	Fri 4/24/20	Thu 5/28/20
65		Richmond Highway Improvements	30 days	Fri 5/29/20	Thu 7/9/20
66		Excavation/Grading	63 days	Thu 3/12/20	Mon 6/8/20
67		Bike Trail / Sidewalks	10 days	Thu 3/12/20	Wed 3/25/20
68		Relocate Bus Shelter	50 days	Thu 3/26/20	Wed 6/3/20
69		Dart Drive	3 days	Thu 6/4/20	Mon 6/8/20
70		Close Dart Drive to Public Traffic	412 days	Thu 12/12/19	Fri 7/9/21
		Close Dart Drive to Public Traffic	1 day	Thu 3/12/20	Thu 3/12/20



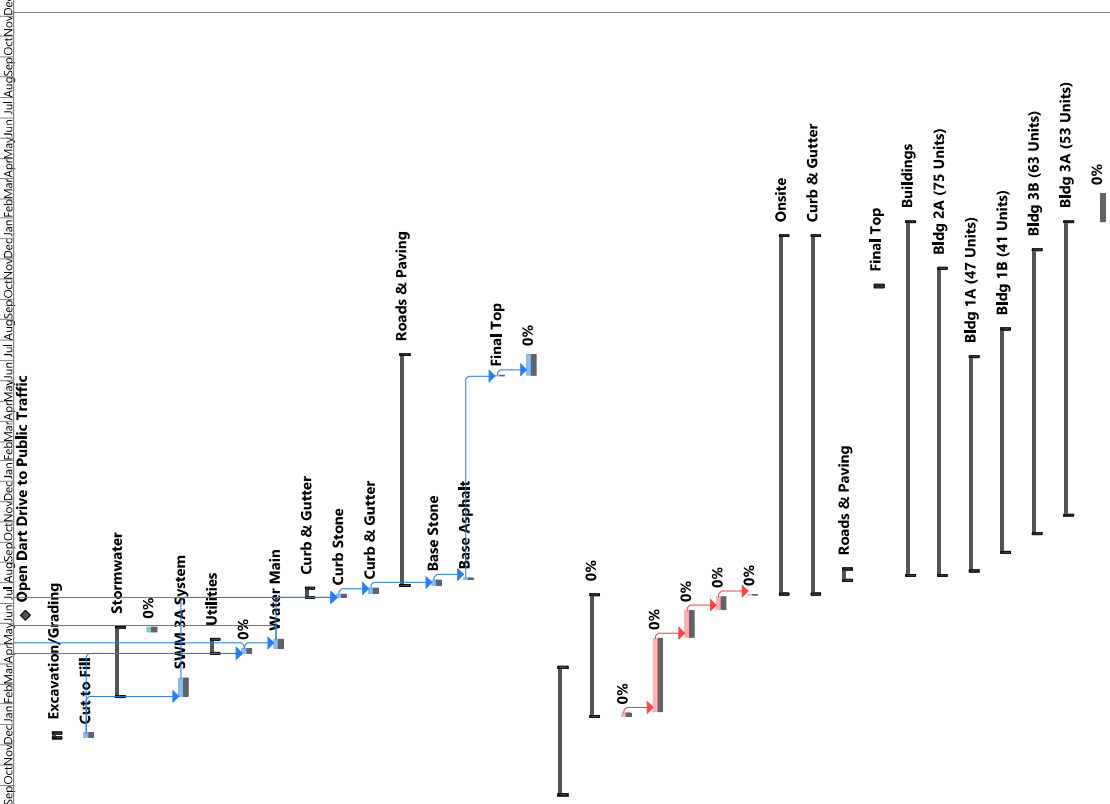




## NORTH HILL MULTI-FAMILY FAIRFAX COUNTY, VA PRELIMINARY PROJECT SCHEDULE

Breedden Construction  
4501 Marshall Run Circle  
Glen Allen, VA 23059

ID	Task Mode	Task Name	Duration	Start	Finish	2022																			
						9	10	11	12	1	2	3	4	5	6	7	8	9	10	11	12				
71	🛠️	Open Dart Drive to Public Traffic	1 day	Fri 6/12/20	Fri 6/12/20																				
72	🛠️	Excavation/Grading	5 days	Thu 12/12/19	Wed 12/18/19																				
73	🛠️	Cut to Fill	5 days	Thu 12/12/19	Wed 12/18/19																				
74	🛠️	Stormwater	74 days	Wed 2/12/20	Mon 5/25/20																				
75	🛠️	Storm Pipe	5 days	Tue 5/19/20	Mon 5/25/20																				
76	🛠️	SWM 3A System	20 days	Wed 2/12/20	Tue 3/10/20																				
77	🛠️	Utilities	15 days	Fri 4/17/20	Thu 5/7/20																				
78	🛠️	Sewer Main	5 days	Fri 4/17/20	Thu 4/23/20																				
79	🛠️	Water Main	10 days	Fri 4/24/20	Thu 5/7/20																				
80	🛠️	Curb & Gutter	10 days	Fri 7/10/20	Thu 7/23/20																				
81	🛠️	Curb Stone	3 days	Fri 7/10/20	Tue 7/14/20																				
82	🛠️	Curb & Gutter	6 days	Thu 7/16/20	Thu 7/23/20																				
83	🛠️	Roads & Paving	249 days	Tue 7/28/20	Fri 7/9/21																				
84	🛠️	Base Stone	6 days	Tue 7/28/20	Tue 8/4/20																				
85	🛠️	Base Asphalt	2 days	Thu 8/6/20	Fri 8/7/20																				
86	🛠️	Final Top	1 day	Tue 6/8/21	Tue 6/8/21																				
87	🛠️	Punch/County Acceptance	23 days	Wed 6/9/21	Fri 7/9/21																				
88	🛠️	Richmond Highway / Dart Drive Traffic Signal Modifications	138 days	Tue 9/17/19	Thu 3/26/20																				
89	🛠️	Traffic Signal Relocation	131 days	Mon 1/13/20	Mon 7/13/20																				
90	🛠️	VDOT Land Use Permit Issuance (By Others - Need by Date)	5 days	Mon 1/13/20	Fri 1/17/20																				
91	🛠️	VDOT Procurement	80 days	Mon 1/20/20	Fri 5/8/20																				
92	🛠️	VDOT Construction	30 days	Mon 5/11/20	Fri 6/19/20																				
93	🛠️	VDOT Signal Timings	15 days	Mon 6/22/20	Fri 7/10/20																				
94	🛠️	Traffic Signal Completed	1 day	Mon 7/13/20	Mon 7/13/20																				
95	🛠️	Onsite	385 days	Wed 7/15/20	Tue 1/4/22																				
96	🛠️	Curb & Gutter	385 days	Wed 7/15/20	Tue 1/4/22																				
101	🛠️	Roads & Paving	13 days	Wed 8/5/20	Fri 8/21/20																				
104	🛠️	Final Top	3 days	Wed 10/20/21	Fri 10/22/21																				
107	🛠️	Buildings	380 days	Wed 8/12/20	Tue 1/25/22																				
108	🛠️	Bldg 2A (75 Units)	330 days	Wed 8/12/20	Tue 11/16/21																				
114	🛠️	Bldg 1A (47 Units)	230 days	Wed 8/19/20	Tue 7/6/21																				
120	🛠️	Bldg 1B (41 Units)	240 days	Wed 9/16/20	Tue 8/17/21																				
126	🛠️	Bldg 3B (63 Units)	305 days	Wed 10/14/20	Tue 12/14/21																				
132	🛠️	Bldg 3A (53 Units)	315 days	Wed 11/11/20	Tue 1/25/22																				
138	🛠️	Final Punch/Project Closeout	30 days	Wed 1/26/22	Tue 3/8/22																				



**Exhibit I**

**Preliminary Budget**

[TO BE ATTACHED]

**THE RESIDENCES AT NORTH HILL - CDBG BUDGET - RECYCLED CDBG**

<u>Work Scope</u>	<u>Bond 47</u>	<u>Bond 94</u>	<u>Senior 9%</u>	<u>Family 9%</u>
<b>Off-Site Improvements</b>				
Dart Drive				
Route 1 (Richmond Highway)	25,399	50,799	34,046	40,531
<b>Retaining Wall</b>	678,123	222,509	-	2,030,955
<b>On-Site Improvements</b>				
Dry Utilities	42,115	84,229	56,452	67,204
Earthwork	174,580	349,159	234,011	278,584
Mobilization	16,935	33,870	22,700	27,024
Erosion and Sediment Controls	31,265	62,531	41,909	49,891
Clearing and Grubbing	25,875	51,750	34,683	41,290
Topsoil Strip Stockpile	12,373	24,747	16,585	19,745
On-Site Fills	138,723	277,447	185,948	221,367
Export	450,902	901,805	604,401	719,525
Topsoil Respread	7,040	14,081	9,437	11,235
Topsoil Haul Excess	103,686	207,371	138,983	165,456
Trade Spoils	65,681	131,362	88,041	104,810
Storm Drainage (Utilities)	75,800	151,599	101,604	120,957
Stormwater Management	29,086	58,173	38,988	46,414
Stormwater Structures On-Site	194,089	388,179	260,162	309,717
Stormwater Structure Off-Site (3A)				
Water Distribution	69,150	138,300	92,691	110,346
Sanitary Distribution	15,801	31,603	21,181	25,215
Paving	65,801	131,601	88,201	105,001
Curb & Gutter	16,298	32,595	21,846	26,007
Walks/Site Concrete	98,486	196,972	132,013	157,159
Plaza Area Structures	8,483	16,966	11,371	13,537
Dewatering	16,846	33,692	22,581	26,882
Contractor Fee/Overhead and General Requirements	236,254	359,134	225,783	471,885
<b>Site Work Soft Costs (Not Included in Pre-D CDBG)</b>				
Constuction Project Manager	10,871	18,700	15,538	
Special Inspections	11,608	23,217	15,560	
<b>Total Budget</b>	<b>2,621,271</b>	<b>3,992,392</b>	<b>2,514,715</b>	<b>5,190,737</b>
<b>CDBG Sources of Funds for Site Work</b>	<b>2,765,278</b>	<b>4,022,739</b>	<b>2,656,857</b>	<b>1,692,774</b>
	(144,006.77)	(30,347.23)	(142,141.88)	

**THE RESIDENCES AT NORTH HILL - RECYCLED LAND SALE PROCEEDS - NON-CDBG**

<u>Work Scope</u>	<u>Bond 47</u>	<u>Bond 94</u>	<u>Senior 9%</u>	<u>Family 9%</u>
Site Work from CDBG Budget Above	-	0	0	0
Building Construction - Foundations	437,352	0	375,000.00	0
<b>Total Budget</b>	<b>437,352</b>	<b>-</b>	<b>375,000</b>	<b>-</b>

**THE RESIDENCES AT NORTH HILL - CDBG BUDGET - PREDEVELOPMENT**

<u>Work Scope</u>	<u>Bond 47</u>	<u>Bond 94</u>	<u>Senior 9%</u>	<u>Family 9%</u>
CHPPENN Developer Fee	53,640	69,484	41,672	
Civil Engineering Attributable to Site Work	32,938	98,814	250,328	
Geotech Work Attributable to Site Work	33,250	83,012	52,932	
Wall Design	17,349	6,000		
<b>Total Budget</b>	<b>137,177</b>	<b>257,310</b>	<b>344,932</b>	
<b>CDBG Sources of Funds for Predevelopment on Site Work</b>	<b>100,000</b>	<b>229,000</b>	<b>271,000</b>	

**Exhibit J**

**Form of Guaranty**

THIS GUARANTY (this “**Guaranty**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by [\_\_\_\_\_] , a \_\_\_\_\_ (each a “**Guarantor**”, and collectively, the “**Guarantors**”)<sup>1</sup> for the benefit of the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”).

**RECITALS:**

WHEREAS, the FCRHA and [\_\_\_\_\_] , a Virginia limited liability company (“**Developer**”), entered into that certain Development and Loan Agreement dated as of the date hereof (the “**DLA**”), pursuant to which (a) the Developer agreed to construct certain site work and to complete an affordable housing development on certain real property located in Fairfax County, Virginia, more particularly described therein, and (b) the FCRHA agreed to loan certain funds to Developer to assist with such construction;

WHEREAS, as a material inducement to the FCRHA entering into the DLA, the Developer is obligated to construct the Site Work and the [ ] Project (as each term is defined in the DLA) and to cause the delivery of a guaranty securing certain of the Developer’s obligations Work under the DLA;

WHEREAS, Developer has caused the delivery of this Guaranty by Guarantors, to satisfy Developer’s obligations with respect to the foregoing Recital; and

WHEREAS, Guarantors are the owners, either directly or indirectly, of a beneficial interest in Developer and will receive material benefit from the execution of this Guaranty and the execution of the DLA by Developer;

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantors hereby irrevocably and unconditionally jointly and severally guarantee the Guaranteed Obligations (hereinafter defined) upon the following terms and conditions:

1. Incorporation of Recitals; Defined Terms. The Recitals set forth above are hereby incorporated in this Guaranty by this reference. Capitalized terms used in this Guaranty and not otherwise defined herein shall have the meanings set forth in the DLA.

2. Guaranteed Obligations. Each Guarantor irrevocably and unconditionally guarantees the payment and performance of all Guaranteed Obligations in this Guaranty. The term “**Guaranteed Obligations,**” as used herein means the following:

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<sup>1</sup> Guarantors to be confirmed.

(a) The timely payment and performance of all of Developer's obligations to complete and deliver the Site Work in accordance with the terms of the DLA, including, without limitation: (i) the full and timely performance of all of the Site Work in strict accordance with the terms of the DLA, free and clear of any and all liens or encumbrances which may arise from, or in any way relate to the Site Work; and (ii) the full and timely payment of all contractors, subcontractors, materialmen, engineers, architects or other persons and entities who have rendered or furnished services or materials for the Site Work; and

(b) The timely payment and performance of all of Developer's other obligations under the DLA accruing up to and including Final Completion, including, without limitation, any repayment of the Loan required by the FCRHA following an Event of Default and the expiration of any applicable notice and cure period under the DLA.

Nothing in this Section is intended to transfer, waive, or release Developer from its obligations pursuant to the DLA or from payment of all sums owed in connection with the Site Work and the [ ] Project.

If Guarantor becomes responsible for completing or causing completion of the Site Work, Guarantor will be entitled to requisition and draw all remaining, undisbursed proceeds of the Loan in accordance with the terms and provisions of the DLA, and FCRHA will advance or disburse such proceeds (subject to the terms of the DLA) for the purpose of completing the Site Work, provided that (a) Guarantor is diligently performing (or causing the performance of) the Site Work, (b) all such disbursements to Guarantor will be secured by the Deed of Trust, (c) no default (after expiration of any applicable notice and cure period) under this Guaranty will have occurred and be continuing.

### 3. Enforcement of Guaranty.

(a) Upon the occurrence of a default by Developer in the timely payment or performance, as the case may be, of any of its obligations under the DLA which constitute Guaranteed Obligations and that continues beyond any applicable notice and cure periods provided for in the DLA, Guarantors shall, within thirty (30) days from the date of notice from the FCRHA, pay any Guaranteed Obligations then to be paid, at their sole cost and expense. This Guaranty is an absolute, irrevocable, and unconditional guaranty of payment. The Guarantors are and shall be liable for the payment of the Guaranteed Obligations, as set forth in this Guaranty, as primary obligors. Any time that FCRHA is entitled to exercise its rights or remedies hereunder, FCRHA may in its discretion elect to demand payment. Nothing herein shall require the FCRHA to provide any notices of default to Developer, Guarantors or any other party that the FCRHA is not already expressly required to give under the terms and conditions of the DLA, Note, or Deed of Trust.

(b) In the event of a breach by either Guarantor of any warranty or covenant under Section 9 of this Guaranty (and, for the avoidance of doubt, neither the Guaranteed Obligations nor any other provision of this Guaranty other than Section 9 shall be subject

to the following), the FCRHA shall provide the non-defaulting Guarantor with written notice of such breach and such non-defaulting Guarantor shall have thirty (30) days from the date of such notice to cure the breach, after which the FCRHA shall be entitled to exercise all rights and remedies in connection with any such breach; provided, however, that the foregoing shall not prevent or delay the FCRHA's rights to enforce the Guaranteed Obligations hereunder.

(c) It is acknowledged that it is a defense hereunder to the enforcement of the Guaranteed Obligations solely as they relate to Developer's obligations to complete and deliver the Site Work under the DLA if the FCRHA shall have defaulted in its obligation, beyond any applicable notice and cure periods provided in the DLA, to disburse up to [ \$ ] for the cost of the Site Work pursuant to and in accordance with the terms and provisions of the DLA, and such default materially adversely affects the completion of the Site Work. For purposes of this clause (c), a default of the FCRHA as aforesaid will "materially adversely affect the completion of the Site Work" if after such default, the Developer would no longer be able to complete the Site Work by the Site Work Milestone in accordance with the provisions of the DLA due solely to the default of the FCRHA.

4. Cumulative Remedies. The exercise by the FCRHA of any right or remedy hereunder or under any other instrument, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy; *provided however*, that in any event the FCRHA shall be entitled to only one recovery (i.e. no "double recovery") for any of the Guaranteed Obligations from Developer and Guarantors, collectively.

5. Direct Action Against Guarantors. It shall not be necessary for the FCRHA, in order to enforce the Guaranteed Obligations, first to institute suit or exhaust its remedies against Developer or others liable on such indebtedness, liability, undertaking, or obligation, or to enforce its rights against any security which shall ever have been given to secure the same. Each Guarantor acknowledges and agrees that it is a primary obligor of the Guaranteed Obligations and not merely a surety of the DLA.

6. Unimpaired Liability. Guarantors' obligations under the terms of this Guaranty shall not be released, diminished, impaired, reduced, or affected by any of the following:

a. the taking or accepting of any other security or guaranty for any or all of the Guaranteed Obligations;

b. any release, surrender, exchange, subordination, or loss of any security at any time existing in connection with any or all of the Guaranteed Obligations;

c. the insolvency, bankruptcy, or lack of partnership or corporate power of Developer, or any party at any time liable for any or all of the Guaranteed Obligations;

d. any neglect, delay, omission, failure, or refusal of the FCRHA to

take or prosecute any action for the collection of any of the Guaranteed Obligations or to foreclose or take or prosecute any action in connection with any instrument or agreement evidencing or securing all or any part of the Guaranteed Obligations;

e. subject to Section 3 above, the existence of any claim, setoff, counterclaim, defense or other rights which Guarantors may have against Developer or the FCRHA, whether in connection with the DLA or any other transaction;

f. any assignment of the DLA or the Guaranteed Obligations or any part thereof;

g. any termination of the DLA or dispossession of Developer under the DLA as a result of an uncured Event of Default by Developer prior to Final Completion;

h. the unenforceability of all or any part of the Guaranteed Obligations against Developer by reason of the fact that the act of creating the Guaranteed Obligations, or any part thereof, is ultra vires, or the officers creating same acted in excess of their authority;

i. any payment by Developer to the FCRHA in respect of the Guaranteed Obligations is held to constitute a preference under the bankruptcy laws or if for any other reason the FCRHA is required to refund such payment or pay the amount thereof to someone else;

j. any impairment, modification, release, or limitation of liability of Developer or its estate in bankruptcy, resulting from the operation of any present or future provision of the Bankruptcy Code of the United States or from the decision of any court interpreting same;

k. the settlement or compromise of any of the Guaranteed Obligations;

l. any change in the corporate, partnership, or limited liability company, as applicable, existence, structure, or ownership of the Developer; or

m. any other circumstance, other than as described in Section 3(c) above, which might otherwise constitute a defense available to, or discharge of, the Developer or the Guarantors.

7. Binding Effect. This Guaranty is for the benefit of the FCRHA and its respective successors and assigns.

8. Representations and Warranties. Each Guarantor represents and warrants on behalf of itself that:

a. it will receive a direct or indirect material benefit from the execution and delivery of the DLA;

b. this Guaranty has been duly authorized by all necessary corporate [or limited liability company] action on Guarantor's part and has been duly executed and delivered by a duly authorized agent of the corporation [or limited liability company];

c. this Guaranty constitutes Guarantor's valid and legally binding agreement, enforceable in accordance with its terms except as limited by debtor relief laws;

d. Guarantor's execution of this Guaranty will not violate Guarantor's organizational documents or result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or violate any order, judgment or decree to which Guarantor or any of its assets is subject;

e. no action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material adverse effect on Guarantor's ability to perform its obligations under this Guaranty;

f. Guarantor is currently solvent and will not be rendered insolvent by providing this Guaranty; and

g. By virtue of Guarantor's relationship with the Developer, the execution, delivery, and performance of this Guaranty is for the direct benefit of the Guarantor and it has received adequate consideration for this Guaranty.

9. Affirmative Covenants. At all times until the Guaranteed Obligations have been fully satisfied, Guarantors will maintain the covenants set forth herein:

a. Financial Covenants. At all times until the Guaranteed Obligations have been fully satisfied, Guarantors (collectively, not individually) shall comply with the following financial covenants:

(i) Net Worth Covenant. Guarantors will maintain a tangible aggregate net worth at least equal to Fifteen Million Dollars (\$15,000,000). For purposes of this Guaranty, "tangible aggregate net worth" means, as of a given date, Guarantors' equity calculated in conformance with generally accepted accounting principles by subtracting total liabilities from the fair market value of Guarantors' total tangible assets, excluding Guarantors' interest in Developer.

(ii) Liquidity. Guarantors will maintain liquidity at least equal to One Million Dollars (\$1,000,000). For purposes of this Guaranty, "liquidity" means (A) cash, (B) cash equivalents, and (C) unencumbered, marketable securities.



b. Financial Reporting Requirements. At the close of every fiscal year of Guarantor after execution of this Guaranty, and at such other times as the FCRHA may reasonably request (including, without limitation, at any time after the occurrence and during the existence of an Event of Default under the DLA, but otherwise no more frequently than once per year), each Guarantor shall provide a financial statement, certified by an officer of Guarantor to be true and correct in all material respects as of the date thereof, with sufficient detail, as reasonably requested by the FCRHA, for the FCRHA to determine that such Guarantor has satisfied its financial covenants set forth herein. This financial statement shall include a balance sheet at the end of such completed fiscal year and the related statements of income, retained earnings, cash flows and owners' equity for such completed fiscal year. At any time when there is an Event of Default under the DLA, such financial statements shall be prepared and certified without qualification by an independent certified public accounting firm satisfactory to FCRHA.

c. Corporate Existence. Each Guarantor will do any and all things necessary to preserve and keep in full force and effect its corporate status in good standing under the laws of the state of its organization and if required under state law, in the Commonwealth of Virginia.

10. Waiver and Subordination. Until such time as this Guaranty is terminated in accordance with Section 19 hereof, each Guarantor (a) waives to the fullest extent permitted by law: (i) any rights that Guarantor may have against Developer by reason of any one or more payments or acts in compliance with the obligations of Guarantor hereunder, (ii) any rights to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought against Guarantor, (iii) all rights and remedies accorded by applicable law to sureties or guarantors, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty), (iv) to presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand (except as may be otherwise expressly required herein), (v) any principles or provisions of law, statutory, or otherwise, that are or might be in conflict with this Guaranty and any legal or equitable discharge of the Guarantor's obligations and (vi) the benefit of any statute of limitations affecting the Guarantor's liability hereunder or the enforcement hereof; and (b) subordinates any liability or indebtedness of Developer held by Guarantor to the obligations of Developer to the FCRHA under the DLA for the Guaranteed Obligations. Each Guarantor agrees that any liability or indebtedness of Developer held by Guarantor is subordinate to Developer's obligations to the FCRHA under the DLA. Each Guarantor agrees that no payment by it under this Guaranty shall give rise to any rights of subrogation against Developer.

11. Intentionally Omitted.

12. Notices. Any notice, demand, statement, request or consent shall be in writing and shall be deemed to be received by the addressee on the day such notice is delivered in hand, on the following day if tendered to a nationally recognized overnight delivery service or on the third day following the day such notice is deposited with the

United States Postal Service first class certified mail, return receipt requested addressed to the address, as set forth below, of the party to whom such notice is to be given, or to such other address as either party shall in like manner designate in writing. The addresses of the parties are as follows:

Guarantors:

[ ]

With a Copy to:

Klein Hornig LLP  
1325 G Street NW  
Suite 770  
Washington, DC 20005  
Attention: Chris Hornig

FCRHA:

Fairfax County Redevelopment and Housing Authority  
3700 Pender Drive, Suite 300  
Fairfax, VA 22030  
Attention: Director, HCD

With a Copy to:

Office of the County Attorney  
Attention: County Attorney  
12000 Government Center Parkway, Suite 549  
Fairfax, VA 22035-0064

13. Governing Law. **THIS GUARANTY SHALL BE GOVERNED BY, INTERPRETED UNDER THE LAWS OF, AND ENFORCED IN THE COURTS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT ITS REGARD TO THE APPLICATION OF ITS INTERNAL RULES GOVERNING CONFLICTS OF LAWS. ANY ACTION OR CLAIM UNDER THIS GUARANTY THAT IS BROUGHT IN A COURT OF LAW SHALL BE BROUGHT SOLELY IN THE CIRCUIT COURT OF FAIRFAX COUNTY, VIRGINIA, OR IN THE EASTERN DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, ALEXANDRIA DIVISION.**

14. Unenforceable Provisions; Severability. If any provision of this Guaranty is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Guaranty, such provision shall be fully severable and this Guaranty shall be construed and enforced as if the illegal, invalid or unenforceable provision had never comprised a part of this Guaranty, and the remaining provisions of this Guaranty shall

remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Guaranty, unless such continued effectiveness of this Guaranty, as modified, would be contrary to the basic understandings and intentions of the parties as expressed herein.

15. Entire Agreement. This Guaranty represents the entire agreement by and between Guarantors and the FCRHA with respect to the subject matter hereof and may be amended only by an instrument in writing executed by the party or an authorized representative of the party against whom such amendment is sought to be enforced.

16. Headings. The headings in this Guaranty have been used for administrative convenience only and should not be used in interpreting and construing the meaning of any provision of this Guaranty.

17. Time of the Essence. Time is of the essence in the performance of this Guaranty.

18. Counterparts; Facsimile Signatures. Any party may execute this Guaranty by delivery to the other party of a facsimile copy evidencing such party's signature. In any such case, the party executing by facsimile shall promptly provide a signed original counterpart to the other parties; provided, that the non-delivery of such a signed counterpart shall not affect the validity or enforceability of this Guaranty.

19. Termination. This Guaranty shall terminate upon the earlier to occur of (a) the completion of all of the Guaranteed Obligations under the DLA and the indefeasible payment and performance of any and all Guaranteed Obligations that are due to be paid or performed at the time of such termination and (b) the occurrence of a transfer pursuant to the provisions of Article V of the DLA and with the prior written consent of the FCRHA; provided, however, that no termination pursuant to this clause (b) shall be effective unless and until the FCRHA shall have received a replacement guaranty in the form hereof or otherwise in form and substance satisfactory to the FCRHA by guarantor(s) satisfactory to the FCRHA and meeting the Guarantor Net Worth Requirement.

20. Insolvency. Should Guarantor become insolvent, or fail to pay the Guarantor's debts generally as they become due, or voluntarily seek, consent to, or acquiesce in the benefit or benefits of any debtor relief law, or become a party to (or be made the subject of) any proceeding provided for by any debtor relief law (other than as a creditor or claimant) that could suspend or otherwise adversely affect the rights of FCRHA under this Guaranty, then the Guaranteed Obligations shall be, as between the Guarantors and FCRHA, a fully matured, due, and payable obligation of the Guarantors to FCRHA (without regard to whether the Developer is then in default under the DLA or whether the Guaranteed Obligations, or any part thereof is then due and performable by the Developer or any other party to the FCRHA), payable in full by the Guarantors to FCRHA upon demand, which shall be the estimated amount owing in respect of the contingent claim created hereunder.

21. No Fraudulent Transfer. It is the intention of the Guarantors and the FCRHA that the amount of the Guaranteed Obligations shall be in, but not in excess of, the maximum amount permitted by fraudulent conveyance, fraudulent transfer, or similar laws applicable to each Guarantor (collectively, “**Fraudulent Transfer Laws**”). Accordingly, notwithstanding anything to the contrary contained in this Guaranty or any other agreement or instrument executed in connection with the payment of any of the Guaranteed Obligations, the amount of the Guaranteed Obligations shall be limited to that amount which after giving effect thereto would not (a) render the Guarantors insolvent, (b) result in the fair saleable value of the assets of the Guarantors being less than the amount required to pay their debts and other liabilities (including contingent liabilities) as they mature, or (c) leave the Guarantors with unreasonably small capital to carry out their business as now conducted and as proposed to be conducted, including its capital needs, as such concepts described in **clauses (a), (b) and (c)** of this Section 21 are determined under applicable law, if the obligations of the Guarantors would otherwise be set aside, terminated, annulled or avoided for such reason by a court of competent jurisdiction in a proceeding actually pending before such court. For purposes of this Guaranty, the term “**applicable law**” means as to each Guarantor each statute, law, ordinance, regulation, order, judgment, injunction or decree of the United States or any state or commonwealth, any municipality, any foreign country, or any territory, possession or governmental authority applicable to the Guarantor.

22. Indemnification. Without limitation of any other obligations of the Guarantors or remedies of the FCRHA under this Guaranty, the Guarantors shall, to the fullest extent permitted by law, indemnify, defend, and save and hold harmless the FCRHA from and against, and shall pay on demand, any and all damages, losses, liabilities, and expenses (including reasonable attorneys’ fees and expenses) that may be suffered or incurred by FCRHA in connection with or as a result of any failure of any Guaranteed Obligations to be the legal, valid, and binding obligations of the Developer enforceable against the Developer in accordance with their terms.

23. Waiver Of Jury Trial. TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH OF THE GUARANTORS AND THE FCRHA EACH IRREVOCABLY WAIVES TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT, OR PROCEEDING ON, ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE ACTS OR FAILURE TO ACT OF OR BY FCRHA IN THE ENFORCEMENT OF ANY OF THE TERMS OR PROVISIONS OF THIS GUARANTY.

24. Joint and Several Liability. The liability of each Guarantor hereunder shall be joint and several with the Developer and each other Guarantor of Developer’s obligations under the DLA as provided herein.

*[Signature Page Follows]*

IN WITNESS WHEREOF, Guarantors have executed this Guaranty as of the date and year first written above.

**GUARANTORS**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[ADD ACKNOWLEDGEMENT]**

**Exhibit K**

**[Reserved]**

## Exhibit L

### Project Manager Tasks

- a. Represent Developer's interests throughout construction providing quality controls.
- b. Review applications for payment submitted by the General Contractor for payment and schedule of values.
- c. Manage change order requests and make recommendations to ownership.
- d. Ensure all federal, state, and local requirements are satisfied.
- e. Chair pre-construction and progress meeting and prepare progress reports.
- f. Ensure and enforce a project safety program and resolve issues with General Contractor.
- g. Enforce an effective quality assurance/quality control program.
- h. Provide timely coordination and relocation of all the dry and wet utilities
- i. Provide timely coordination and submission of the geotechnical reports to the Geotechnical Review Board (GRB) and obtain all approvals prior to the second submission of the site plans.
- j. Satisfy all the approval conditions and the bonds and agreements necessary to obtain the Fairfax County site and land disturbance permits.
- k. Coordinate with VDOT and obtain required VDOT entrance permit and ensure street acceptance at the end of construction.
- l. Coordinate with all consultants and obtain building permits.
- m. Ensure compliance with the Fairfax County Critical Structures Program.
- n. Contract with a third party special inspection firm for compliance with the Critical Structures Program and manage their daily inspections with GC, and obtain their final approval at the end of construction.
- o. Oversee the unsuitable material excavation and treatment.
- p. Oversee an effective coordination of the required changes and field orders with the stakeholders and assure timely interdisciplinary design coordination.
- q. Enforce timely and effective coordination and approval of submittals.
- r. Ensure timely response to RFIs.

- s. Ensure compliance with CDBG requirements.
- t. Prepare documentation of compliance with Davis Bacon requirements.
- u. Ensure that project schedule is adhered to by all involved.
- v. Communicate and coordinate all construction issues including any environmental and noise violations and complains with the General Contractor and the community in a timely manner.
- w. Secure permit closeout and bond release.
- x. Other tasks as required.



## Exhibit M

### CDBG Requirements

**1. Provisions Required by Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

**2. General.**

- (a) Developer shall comply with each of the following, as applicable:
- (i) 24 C.F.R. part 570, “Community Development Block Grants,” subpart K;
  - (ii) 2 C.F.R. part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”;
  - (iii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*) (P.L. 88-352), and the implementing regulations at 24 C.F.R. part 1;
  - (iv) Title VIII of the Civil Rights Act of 1968 (Fair Housing Act), as amended (42 U.S.C. §§ 3601-3620);
  - (v) Executive Order 11063, as amended by Executive Order 12259, and the implementing regulations in 24 C.F.R. part 107;
  - (vi) Section 109 of Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. § 5301 *et seq.*), and the implementing regulations at 24 C.F.R. part 6;
  - (vii) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 1601 *et seq.*);
  - (viii) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
  - (ix) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§ 4851-4856), and implementing regulations at 24 C.F.R. part 35, subparts A, B, J, K, and R;
  - (x) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. § 1701u) and implementing regulations at 24 C.F.R. part 135;

and (xi) Architectural Barriers Act of 1968, as amended (42 U.S.C. §§ 4151-4157);

(xii) Uniform Federal Accessibility Standards (Appendix A to 24 C.F.R. part 40).

(b) Developer shall include the provisions of this Exhibit M in the Site Work Contract. Developer shall require that such provisions be included in all subcontracts for the construction of the Work; provided that Developer may omit those certain provisions with dollar value thresholds from subcontracts falling below such thresholds.

(c) Simultaneously with the execution of this Agreement, Developer will complete and sign each of Schedules M-1 through M-5. Further, Developer will cause the General Contractor and each subcontractor to also provide completed and signed copies of Schedules M-1 through M-6 upon execution of their respective contracts; provided that Developer need not obtain Schedule M-5 from subcontractors with contract amounts of under \$100,000.

(d) Developer shall provide such documentation and information to the FCRHA and take such actions as requested by the FCRHA as reasonably necessary for the FCRHA's compliance with CDBG program rules, regulation, and guidance.

(e) In this Exhibit M, the term "subcontractor" means both any subcontractor under the General Contractor, as well as any other entity engaged by Developer for the Site Work.

### **3. Equal Opportunity Clause – Section 202 of Executive Order 11246.**

(a) During the performance of this contract, Developer agrees as follows:

(i) Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Developer will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(ii) Developer will, in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) Developer will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired

about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Developer's legal duty to furnish information.

(iv) Developer will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of Developer's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v) Developer will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) Developer will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of Developer's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and Developer may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) Developer will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon the General Contractor and each subcontractor or vendor. Developer will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *provided*, however, that in the event a Developer becomes involved in, or is threatened with, litigation with the General Contractor, a subcontractor, or a vendor as a result of such direction by the administering agency, Developer may request the United States to enter into such litigation to protect the interests of the United States.

(b) Developer further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *provided*, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

(c) Developer agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of the General Contractor and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

(d) Developer further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Developer agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(e) Developer hereby agrees that it will incorporate or cause to be incorporated into any contract or subcontract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, this provisions of this Section 3 of Exhibit M.

#### **4. Equal Opportunity – Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246).**

(a) Developer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Specifications" set forth herein.

(b) The goals and timetables for minority and female participation, expressed in percentage terms for Developer's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<b>Goals for Minority Participation For Each Trade</b>	<b>Goals for Female Participation For Each Trade</b>
28.0%	6.9%

These goals are applicable to all the Developer’s construction work (whether or not it is federally assisted) performed in the covered area. If Developer performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, Developer also is subject to the goals for both its federally involved and nonfederally involved construction.

Developer’s compliance with the Executive Order and the regulations in 41 C.F.R. Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 C.F.R. § 60-4.3(a), and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Developer shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Developer to Developer or from project to project for the sole purpose of meeting the Developer’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 C.F.R. Part 60-4. Compliance with the goals will be measured against the total work hours performed.

(c) Developer shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

(d) As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is the North Hill project site, Fairfax County, Virginia.

(e) Developer must include the provisions of this Section 4 in all subcontracts (and the solicitations for subcontracts) over \$10,000.

**5. Standard Federal Equal Opportunity Construction Contract Specifications (Executive Order 11246)**

(a) As used in these specifications:

(i) “Covered area” means the geographical area described in the solicitation from which this contract resulted;

(ii) “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(iii) “Employer identification number” means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(iv) “Minority” includes:

(A) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(B) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(C) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(D) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(b) Whenever the Developer, the General Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

(c) If Developer is participating (pursuant to 41 C.F.R. § 60–4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Developer must be able to demonstrate its participation in and compliance with the provisions of any such Hometown Plan. Each Developer, General Contractor, or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other contractors or subcontractors toward a goal in an approved Plan does not excuse any covered contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

(d) Developer shall implement the specific affirmative action standards provided in paragraphs 5(a) through (p) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization Developer should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal

or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. Developer is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

(e) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Developer has a collective bargaining agreement, to refer either minorities or women shall excuse Developer's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by Developer during the training period, and Developer must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) Developer shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Developer's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. Developer shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(i) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which Developer's employees are assigned to work. Developer, where possible, will assign two or more women to each construction project. Developer shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out Developer's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(ii) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when Developer or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(iii) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to Developer by the union or, if referred, not employed by Developer, this shall be documented in the file with the reason therefor, along with whatever additional actions the Developer may have taken.

(iv) Provide immediate written notification to the Director when the union or unions with which Developer has a collective bargaining agreement has not referred to Developer a minority person or woman sent by Developer, or when Developer has other information that the union referral process has impeded Developer's efforts to meet its obligations.

(v) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to Developer's employment needs, especially those programs funded or approved by the Department of Labor. Developer shall provide notice of these programs to the sources compiled under Section 5(b) above.

(vi) Disseminate Developer's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Developer in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(vii) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(viii) Disseminate Developer's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing Developer's EEO policy with the General Contractor and other subcontractors with whom Developer does or anticipates doing business.

(ix) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Developer's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, Developer shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(x) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Developer's work force.



(xi) Validate all tests and other selection requirements where there is an obligation to do so under 41 C.F.R. Part 60–3.

(xii) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(xiii) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and Developer's obligations under these specifications are being carried out.

(xiv) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(xv) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction subcontractors and suppliers, including circulation of solicitations to minority and female subcontractor associations and other business associations.

(xvi) Conduct a review, at least annually, of all supervisors' adherence to and performance under Developer's EEO policies and affirmative action obligations.

(h) Developer is encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Section 5(a) through (p)). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Section 5(a) through (p) provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in Developer's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of Developer. The obligation to comply, however, is Developer's and failure of such a group to fulfill an obligation shall not be a defense for Developer's noncompliance.

(i) A single goal for minorities and a separate single goal for women have been established. Developer, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, Developer may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though Developer has achieved its goals for women generally, Developer may be in violation of the Executive Order if a specific minority group of women is underutilized).

(j) Developer shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) Developer shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

(l) Developer shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Developer who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

(m) Developer, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Section 5(g) of this Exhibit M so as to achieve maximum results from its efforts to ensure equal employment opportunity. If Developer fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 C.F.R. § 60-4.8.

(n) Developer shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

(o) Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(p) Developer must include the provisions of this Section 5 in all subcontracts (and the solicitations for subcontracts) over \$10,000.

**6. Labor Standards.** Developer shall comply with (a) the Davis Bacon Act (40 U.S.C. §§ 276a to 276a-7), as supplemented by Department of Labor regulations (29 C.F.R. part 5); (b) the Copeland “Anti-Kickback Act” (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3); (c) portions of the Contract Work Hours and Safety Standards Act codified at 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5); and (d) the Federal Labor Standards Provisions set forth in Form HUD-4010, attached as Schedule M-7 and incorporated herein.

**7. Environmental Provisions.**

(a) Developer shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387).

(b) Developer shall report any violations of the Clean Air Act or the Federal Water Pollution Control Act to the FCRHA and the Regional Office of the Environmental Protection Agency.

**8. Debarment and Suspension.**

(a) Developer represents and warrants that it is not debarred, suspended, proposed for debarment, or otherwise excluded from or ineligible for participation in any Federal assistance program in accordance with Executive Orders 12549 and 12689 and 24 C.F.R. part 24.

(b) Developer shall not enter into any contract with any party listed on the governmentwide exclusions in the System for Award Management (SAM) and shall require the General Contractor and any subcontractor to include a similar provision in any subcontracts.

(c) Developer shall maintain documentation verifying the eligibility of the General Contractor and all subcontractors under this Section at the time the contract with each contractor is executed.

(d) Developer must have and maintain a Dun and Bradstreet Data Universal Numbering System (DUNS) number and active federal System for Awards Management (SAM) registration throughout the Term of this Agreement. Developer will provide its DUNS number to the FCRHA promptly upon execution of this Agreement.

**9. Anti-Lobbying.** Simultaneously with the execution of this Agreement, Developer will sign and provide to the FCRHA the certification attached as Schedule M-1 and incorporated herein. Developer shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

**10. Procurement of Recovered Materials.**

(a) Developer shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

(b) In accordance with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, Developer shall procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory

level of competition. Developer shall procure items designated in the EPA guidelines that contain the highest percentage of recovered materials practicable unless Developer determines that such items: (i) are not reasonably available in a reasonable period of time; (ii) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (iii) are only available at an unreasonable price.

(c) Paragraph (b) of this clause shall apply to items purchased under this contract where: (i) Developer purchases in excess of \$10,000 of the item under this contract; or (ii) during the preceding Federal fiscal year, Developer: (A) purchased any amount of the items for use under a contract that was funded with Federal appropriations and was with a Federal agency or a State agency or agency of a political subdivision of a State; and (B) purchased a total of in excess of \$10,000 of the item both under and outside that contract.

### **11. Section 3.**

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

(b) The parties to this contract agree to comply with HUD's regulations in 24 C.F.R. part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) Developer agrees to send to each labor organization or representative of workers with which Developer has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of Developer's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.

(d) Developer agrees to include this Section 3 clause in the Site Work Contract and every subcontract subject to compliance with regulations in 24 C.F.R. part 135 and agrees to take appropriate action, as provided in an applicable provision of the Site Work Contract, the subcontract or in this Section 3 clause, upon a finding that the applicable entity is in violation of the regulations in 24 C.F.R. part 135. Developer will not enter into any contract with any contractor where Developer has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 C.F.R. part 135.

(e) Developer will certify that any vacant employment positions, including training positions, that are filled (1) after Developer is selected but before the Site Work Contract is executed, and (2) with persons other than those to whom the regulations of 24 C.F.R. part 135 require employment opportunities to be directed, were not filled to circumvent Developer's obligations under 24 C.F.R. part 135.

(f) Noncompliance with HUD's regulations in 24 C.F.R. part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

(g) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

## **12. Conflict of Interest**

(a) Pursuant to 2 C.F.R. § 200.112, Developer must disclose in writing any conflict of interest to the FCRHA in accordance with applicable Federal awarding agency policy.

(b) Developer must maintain and comply with written standards of conduct covering conflicts of interest consistent with the provisions of 2 C.F.R. § 200.318 and 24 C.F.R. § 570.611. Developer must provide a copy of these standards to the FCRHA promptly upon execution of this Agreement.

## **13. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.**

(a) Developer must take all necessary steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

(i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(v) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(vi) Requiring the General Contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a)(i) through (v) of this section.

(b) Developer will submit to the FCRHA at Substantial Completion a report of the minority business and women's business enterprise status of the General Contractor and all subcontractors paid with CDBG funds with contracts of \$10,000 or greater, in a format to be provided by the FCRHA.

**14. Drug-Free Workplace.** Developer must comply with the Drug-Free Workplace Act of 1988 and related regulations. Developer will provide a copy of its drug-free workplace policy statement and a summary of its drug-free awareness program to the FCRHA promptly after the execution of this Agreement.

**Schedule M-1**  
**Byrd Anti-Lobbying Certification**

31 U.S.C. § 1352 *et seq.*

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal Loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of and Federal contract, grant, loan, or cooperative agreement.
2. If any funds or than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions [as amended by “Government wide Guidance for New Restrictions on Lobbying,” 61 Fed. Reg. 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, *et seq.*)
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

\_\_\_\_\_ (entity name) certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, \_\_\_\_\_ (entity name) understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, apply to this certification and disclosure, if any.

Printed Name of Representative: \_\_\_\_\_

Signature/Date: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

SSN or TIN No: \_\_\_\_\_

**Schedule M-2**  
**Certification Regarding Equal Employment Opportunity**

---

**INSTRUCTIONS**

This certification is required pursuant to Executive Order 11246 (30 F.R. 12319-25). The implementing rules and regulations provide that any bidder or prospective contractor or any of their proposed subcontractors, shall state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the Equal Opportunity Clause; and, if so, whether it has completed all compliance reports due under applicable instructions.

Where the certification indicates that the bidder has not filed a compliance report due under applicable instructions, such bidder shall be required to submit a compliance report within seven calendar days after bid opening. No contract shall be awarded unless such report is submitted.

---

**CERTIFICATION BY BIDDER**

---

Name and Full Address of Bidder

---

1. Has the Bidder participated in a previous contract or subcontract subject to the Equal Opportunity Clause?

Yes     No

---

2. Were Compliance Reports required in connection with such contract(s) or subcontract(s)?

Yes     No

---

3. Has the Bidder completed all compliance instructions, including the SF-100?

Yes     No     None Required

---

4. Have you ever been or are you being considered for sanction(s) due to a violation of Executive Order 11246, as amended?

Yes     No

---

---

Name of Company

---

---

Name and Title of Authorized Certifying Official

---

---

Signature of Authorized Certifying Official

---

Signature Date



**Schedule M-3  
Certification of Nonsegregated Facilities**

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**INSTRUCTIONS**

The bidder certifies that he/she does not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, and that he/she does not permit his/her employees to perform their services at any location, under his/her control, where segregated facilities are maintained. The bidder certifies further that he/she will not maintain or provide for his/her employees any segregated facilities at any of his/her establishments, any location under his/her control where segregated facilities are maintained. The bidder agrees that a breach of his/her certification will be a violation of the Equal Opportunity clause in any contract resulting from acceptance of this bid. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The bidder agrees that (except where he/she has obtained identical certification from proposed subcontractors specific time periods) he/she will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that he/she will retain such certifications in his/her files.

**NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.**

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**CERTIFICATION BY BIDDER**

---

Name and Full Address of Bidder

---

Name of Company

---

Name and Title of Authorized Certifying Official

---

Signature of Authorized Certifying Official

Signature Date

**Schedule M-4**  
**Certification Concerning Labor Standards and Prevailing Wage Requirements**

---

Name of Project \_\_\_\_\_

Project Number (if applicable) \_\_\_\_\_

---

The undersigned, having executed a contract for the construction of the above-identified project, acknowledges that:

- (a) The Labor Standards provisions are included in the aforesaid contract; and
- (b) Correction of any infractions of the aforesaid conditions, including infractions by any of his subcontracts and any lower tier subcontractors, is his responsibility.

The undersigned certifies that:

- (a) Neither he nor any firm, partnership or association in which he has substantial interest is designated as an ineligible contractor by the Comptroller General of the United States pursuant to Section 5.6 (b) of the regulations of the Secretary of Labor, Part 5 (29 CFR, Part 5) or pursuant to Section 5(a) of the Davis-Bacon Act, as amended (40 U.S.C. 276a-2(a)).; and
- (b) No part of the aforementioned contract has been or will be subcontracted to any subcontractor if such subcontractor or any firm, corporation, partnership or association in which such subcontractor has a substantial interest in designated as an ineligible contractor pursuant to any of the aforementioned regulatory or statutory provisions.
- (c) He agrees to obtain and forward to the aforementioned recipient within ten days after the execution of any subcontract, including those executed by his subcontractors and any lower tier subcontractors, a Subcontractor's Certification Concerning Labor Standards and Prevailing Wage Requirements executed by the subcontractors.

---

**CONTRACTOR'S CERTIFICATION**

---

Legal Name and Business Address of Contractor: \_\_\_\_\_

---

The undersigned is:

- A Single Proprietorship                       A Corporation Organized in the State of \_\_\_\_\_
- A Partnership                                       Other Organization – Describe \_\_\_\_\_

---

**[Certification Continues on the Next Page]**

CONTRACTOR'S CERTIFICATION (continued)

The name, title and address of the owner, partner or officers of the undersigned are:

<b>Name</b>	<b>Title</b>	<b>Address</b>

The names and addresses of all other persons, both natural and corporate, having a substantial interest in the undersigned, and the nature of the interest are (If none, so state):

<b>Name</b>	<b>Title</b>	<b>Nature of Interest</b>

The names, addresses and trade classifications or all other building construction contractors in which the undersigned has a substantial interest are (If none, so state):

<b>Name</b>	<b>Title</b>	<b>Trade Classification</b>

Name of Company

Name and Title of Authorized Certifying Official

Signature of Authorized Certifying Official

Signature Date

**Schedule M-5**

**Section 3 Economic Opportunities Plan**

*Please see attached.*



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## SECTION 3 ECONOMIC OPPORTUNITIES PLAN

**Instructions:** See page 3 on how to complete this form and it *must be completed by the Bidder, each Contractor and Subcontractor.*

### Section A. Project Information

Project Name:	Business Name:
Contract Amount: \$	Developer:
Principal Contact Name:	Principal Contact Phone:
Subcontractor: Yes ____ No ____	Section 3 Business Concern Yes ____ No ____

### Section B. Goals:

I intend to comply with Section 3 requirements of the Housing and Urban Development Act of 1968

1. The subrecipient (Contractor/Developer) commits to **employ and/or train** Fairfax County Department of Housing's residents and/or low and very low- income area residents during the term of the contract. Full time, temporary, seasonal, and part time hires all count toward the 30% hiring goal. The subrecipient agrees to screen all new hires for Section 3 residency using Section 3 Resident Certification form provided. I expect to hire \_\_\_\_\_ new employees for this project.

**AND/OR**

2. The subrecipient (Contractor/Developer) commits to subcontract \$\_\_\_\_\_ of \$\_\_\_\_\_ (total contract award) to Section 3 business concerns. Ten percent may be awarded for construction and three percent to other covered contracts. With work performed on this project, Contractor/Developer agrees to include the Section 3 clause in all its contracts. Contractor/Developer agrees to require all subcontractors to submit a Section 3 Opportunities Plan. **Note:** Contracts for materials and supplies are not subject to Section 3.

**AND/OR**

3. Employment and contracting needs are not expected and the contractor/developer cannot satisfy Section 3 obligations in Option 1 or 2. The subrecipient commits to provide "other opportunities" such as resume assistance, entrepreneurial workshops, mock interviews, computer training, career mentoring, and internships.

**Section C. Provide the following information:**

1. Strategies to post job opportunities and hire Section 3 residents. List all job opportunities you expect. List any training opportunities you can provide. Contact Lura Bratcher to post opportunities on List Serv.
  
2. List any subcontracting opportunities and the strategies to provide contracting opportunities to Section 3 business concerns. If subcontracting multiple contracts, please list number of contracts and amounts.
  
3. Please describe "Other opportunities" that will be provided to Section 3 residents. (e.g. internship, resume assistance, interview assistance, job coaching)

The Contractor/Developer agrees to comply with all provisions of Section 3 as set forth in 24 CFR 135 and DHCD's policies for implementing Section 3 requirements. Failure to make attempts to the "greatest extent feasible" with the approved plan may be deemed a compliance violation.

\_\_\_\_\_  
Developer Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Date



Fairfax County is committed to nondiscrimination on the basis of disability in all county programs, services and activities. Reasonable accommodations will be provided upon request. For information, call 703-246-5101, TTY: 711.

## INSTRUCTIONS FOR THE SECTION 3 ECONOMIC OPPORTUNITIES PLAN

The purpose of this plan is to ensure economic opportunities generated by HUD financial assistance are directed to low and very low-income persons. "Opportunities" is defined as hiring, training, contracting, and/or employment related services (i.e. resume assistance, internships, job shadowing, etc.)

This plan is to be completed with all bids/proposals for contracts that are for community development, maintenance, modernization, rehabilitation, and other professional services. If a subrecipient is unable to satisfy Section 3 goals, they must state reasons and/or impediments in the plan.

1. In Section A, complete all requested information.
2. In Section B, enter a check in each box that applies to your project.
  - a. For Goal 1, please enter the numerical amount of new hires or trainees you expect to need on this project.
  - b. For Goal 2, please enter the dollar amount of both the subcontract and the total contract dollars. If there will be more than one subcontract, please include all dollar amounts.
  - c. Goal 3 should be selected if the contractor/developer is not able to satisfy Section 3 requirements through options 1 or 2.
3. In Section C, please describe in detail how you will achieve the Section 3 goals. (Section 3 Best Practices – page 4 - is attached for ideas and guidance).
4. Attached is the Section 3 Resident Certification Form (page 5) to screen all new hires.
5. Sign and date page 2 of the Economic Opportunities Plan.

Please return all forms to Kim Abel, Program Manager, via fax 703-653-1383 or email [kim.abel@fairfaxcounty.gov](mailto:kim.abel@fairfaxcounty.gov). If you have questions regarding these forms please call 703-246-5012.

For more information regarding Section 3 contact: Lura Bratcher, Section 3 Coordinator, at 703-246-5073 or [lura.bratcher@fairfaxcounty.gov](mailto:lura.bratcher@fairfaxcounty.gov)

## **SECTION 3 BEST PRACTICES**

1. Advertising of opportunities in general circulation media, Section 3 targets media.
2. Directing written solicitations to Section 3 Residents and Section 3 Business Concerns for specific contracting opportunities whenever possible.
3. Identifying portions of work where Section 3 Residents or Section 3 Business Concerns are likely to be successful.
4. Providing specific reasons for non-utilization of unsuccessful Section 3 Residents or Section 3 Business Concerns.
5. Establishing programs to assist Section 3 Residents or Section 3 Business Concerns to meet insurance, bonding, and other contracting requirements.
6. Employing joint venture agreements whenever feasible.
7. Posting of signage at project sites soliciting Section 3 Residents and Section 3 Business Concerns.
8. Maintaining records (including copies of correspondence, memoranda) that document the process and steps followed to encourage utilization of Section 3 job training, employment, contracting, and economic opportunities by Section 3 Residents and Section 3 Business Concerns.
9. Including Section 3 Plans of the Recipient, its Contractors, and Subcontractors in bid documents or other contract solicitations.
10. Contacting resident councils and community organizations in the housing development or developments where Section 3 residents reside, to request assistance in notifying residents of the employment and training positions to be filled.
11. Entering contracts on a negotiated, rather than a bid basis whenever possible.
12. Maintaining assistance to the Chamber of Commerce Small Business Service Center to assist Section 3 businesses with the development of a business profile and other administrative activities.
13. Whenever feasible, holding job information meetings and workshops to assist Section 3 residents in completing applications. Conducting interviews in the housing development(s) or the neighborhood service area of a project.
14. Appointing or recruiting an executive official of the company or agency as an Equal Opportunity Officer to coordinate the implementation of Section 3 activities.





# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## Section 3 Resident Certification Form

*In accordance with HUD regulations stated in 24 CFR 135, this company is required "to the greatest extent feasible", to ensure that employment and other economic opportunities generated by HUD financial assistance, be directed to low income persons. In order to comply with this statute, all new hires including full time, part time, and seasonal employees must complete this form. All information obtained will be kept confidential.*

Company Name: \_\_\_\_\_

### **Demographic Information**

An individual, as defined by Section 3 regulations found in 24 CFR 135, shall certify to the recipient, if they meet the requirements as a Section 3 new hire.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

PHONE#: \_\_\_\_\_ EMAIL: \_\_\_\_\_

A Section 3 eligible person must meet one of the following criteria (check all that apply):

I receive housing assistance in a Metropolitan county contained within the Washington-Arlington-Alexandria, DC-VA-MD HUD Metro Area (see reverse for list of municipal jurisdictions).

My household income (*before being hired*) is **BELOW** the maximum income limit (see below) for my family size, **and** I live in a Metropolitan county contained within the Washington-Arlington-Alexandria, DC-VA-MD HUD Metro (see reverse for list of municipal jurisdictions).

### **Maximum Income Limits by Household Size**

1 Person	2 Persons	3 Persons	4 Persons	5 Persons	6 Persons	7 Persons	8 Persons
\$54,350	\$62,100	\$69,850	\$77,600	\$83,850	\$90,050	\$96,250	\$102,450

I, \_\_\_\_\_, (full name) certify that my answers are true and accurate. I understand that this information may be verified by my employer or Fairfax County Department of Housing and Community Development.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Metropolitan counties contained within the Washington-Arlington-Alexandria, DC-VA-MD are listed below.

Washington-Arlington-Alexandria, DC-VA-MD-WV MSA					
County Name	State	County Name	State	County Name	State
District of Columbia	DC	Fairfax County	VA	Alexandria City	VA
Calvert County	MD	Fauquier County	VA	Fairfax City	VA
Charles County	MD	Loudoun County	VA	Falls Church City	VA
Frederick County	MD	Prince William County	VA	Fredericksburg City	VA
Montgomery County	MD	Spotsylvania County	VA	Manassas City	VA
Prince George's County	MD	Stafford County	VA	Manassas Park City	VA
Arlington County	VA	Warren County	VA		
Clarke County	VA				

The Section 3 Resident Certification form should be returned via email or fax to: Kim Abel, Program Manager, fax #703-653-1383 or [kim.abel@fairfaxcounty.gov](mailto:kim.abel@fairfaxcounty.gov) and call 703-246-5012 if questions regarding this form.

For more information regarding Section 3 contact: Lura Bratcher, Section 3 Coordinator, at 703-246-5073 or [lura.bratcher@fairfaxcounty.gov](mailto:lura.bratcher@fairfaxcounty.gov)

**WARNING**

Section 1001 of Title 18 of the U.S. Code makes it a criminal offense to make willful false statements or misrepresentation to any Department or Agency of the United States as to matters within its jurisdiction.

**Virginia Privacy and Freedom of Information Laws**

Information supplied to the Fairfax County Department of Housing and Community Development (DHCD) will be used for the purpose of verifying eligibility of Businesses and Firms as obtaining Section 3 status under Section 3 of the Housing and Urban Development Act of 1968, 24 CFR Part 135. The information furnished to DHCD will be maintained and in accordance with the Virginia Freedom of Information Act, VA Code Section 2.1-340 through 346.1, as amended, and the Privacy Protection Act of 1976, VA Code Section 2.1-377 through 386, as amended.



Fairfax County is committed to nondiscrimination on the basis of disability in all county programs, services and activities. Reasonable accommodations will be provided upon request. For information, call 703-246-5101, TTY: 711.

**Schedule M-6**

**Section 3 Business Certification Plan**

*Please see attached.*



# County of Fairfax, Virginia

To protect and enrich the quality of life for the people, neighborhoods and diverse communities of Fairfax County

## SECTION 3 BUSINESS CERTIFICATION

The undersigned bidder/contractor certifies as part of its bid or contract, that it is a Section 3 Business as indicated below.

This designation is required of all business/organizations including publicly traded corporations, non-profits, government organizations, partnerships, sole proprietorships, etc. as part of its bid contract.

### Section 3 Definitions

1.	___	<b>25 Percent Subcontract</b> - A business that provides sufficient evidence to commit to subcontracting at least 25 percent of the total dollar amount of their award to Section 3 businesses.
2.	___	<b>51 Percent Owned</b> - A business that is owned 51 percent or more by a Section 3 resident.
3.	___	<b>30 Percent Employed Full Time</b> - A business whose current full time employees (seasonal, part time, permanent) consist of at least 30 percent Section 3 Residents and the period from the date they were hired to the date of certification does not exceed three (3) years. Section 3 residents are defined as low (80% below AMI) or very low (50% below AMI) income persons residing in the metropolitan area based on family size (see reverse).
4.	___	<b>Not a Section 3 Business</b>

Business Name \_\_\_\_\_

Project \_\_\_\_\_

Address \_\_\_\_\_

Name, Title \_\_\_\_\_

Date \_\_\_\_\_

### **Low Income Limit by Household Size**

<b>1 Person</b>	<b>2 Persons</b>	<b>3 Persons</b>	<b>4 Persons</b>	<b>5 Persons</b>	<b>6 Persons</b>	<b>7 Persons</b>	<b>8 Persons</b>
\$54,350	\$62,100	\$69,850	\$77,600	\$83,850	\$90,050	\$96,250	\$102,450

### **WARNING**

Section 1001 of Title 18 of the U.S. Code makes it a criminal offence to make willful false statements or misrepresentation to any Department or Agency of the United States as to matters within its jurisdiction.

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#### Virginia Privacy and Freedom of Information Laws

Information supplied to the Fairfax County Department of Housing and Community Development (HCD) will be used for the purposes of verifying eligibility of Businesses and Firms as obtaining Section 3 status under Section 3 of the Housing and Urban Development Act of 1968, 24 CFR Part 135. The information furnished to HCD will be maintained and in accordance with the Virginia Freedom of Information Act, VA Code Section 2.1-340 through 346.1, as amended, and the Privacy Protection Act of 1976, VA Code Section 2.1-377 through 386, as amended.



*Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. To request special accommodations call 703-246-5100 or TTY 703-385-3578.*



For more information regarding section 3 contact **Lura Bratcher, Section 3 Coordinator at 703-246-5073** or by mail at:

Fairfax County Department of Housing and Community Development  
3700 Pender Drive, Suite 100  
Fairfax, VA 22030

**Schedule M-7**

**Form HUD-4010**

*Please see attached.*

## Applicability

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section I(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

**(ii) (a)** Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

**(1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and

**(2)** The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part

of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been

communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;



(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### 4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who

is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by

the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be

awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

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**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.