

AMENDMENT TO INTERIM AGREEMENT

THIS AMENDMENT TO INTERIM AGREEMENT (this “**Agreement**”) is made and entered into as of this _____ day of _____, 2017 (the “**Effective Date**”), by and among the **FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY**, a political subdivision of the Commonwealth of Virginia (the “**FCRHA**”), and **CHPPENN I, LLC**, a Virginia limited liability company (“**CHPPENN**,” and together with the FCRHA, collectively, 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 County Land**”).
2. The Existing County Land is comprised of (a) the Woodley Hills Estates manufactured home community, which occupies approximately 15 of the 48 acres, and (b) an approximately 33-acre unimproved tract of land known as North Hill and described on Schedule A attached hereto (such 33-acre tract, the “**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. (such law, the “**PPEA**”) proposing to redevelop the 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 Property, with the undeveloped balance to be preserved as parkland.
5. 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 (the “**For-Sale Townhomes**”) on a portion of the Property. In addition, a portion of the For-Sale Townhomes would be affordable dwelling units under Fairfax County’s affordable dwelling unit ordinance.
6. After further negotiations with the FCRHA, CHPPENN proposed the construction of approximately 279 multi-family dwelling units, including approximately 60 senior independent living units, in five separate, high quality, urban designed buildings with parking that structured in part (the “**Affordable Housing Units**”) on one or more portions of the Property (collectively, the “**Ground Lease Premises**”), which will be subject to long-term ground leases to CHPPENN (collectively, the “**Ground Leases**”).

7. The FCRHA and CHPPENN envision three separate Ground Leases: one intended to be funded by nine percent (9%) low-income housing tax credits (“**LIHTC**”) from the Virginia Housing Development Authority (“**VHDA**”), one currently contemplated to be funded by 4% LIHTC from VHDA, and one to be occupied by seniors and intended to be funded by some form of LIHTC.
8. In connection with the RCP and the overall revitalization of the Property and surrounding area, the FCRHA desires to sell a portion of the Property (the “**Sale Property**”) for development as market rate townhomes. The terms and conditions upon which the FCRHA will sell the Sale Property shall be detailed in a purchase agreement to be negotiated with a third party developer and subsequently approved by the FCRHA (the “**Purchase Agreement**”).
9. In connection with the development of the Affordable Housing Units, the FCRHA desires to contribute a portion of the proceeds from the sale of the Sale Property toward the site work costs for the Affordable Housing Units (the “**FCRHA Contribution Funds**”). The manner and conditions upon which the FCRHA will distribute the FCRHA Contribution Funds to CHPPENN shall be detailed in a development agreement between the FCRHA and CHPPENN, to be subsequently approved by the FCRHA.
10. The Parties also intend that the remainder of the Property be retained, developed and maintained for use as a public park (the “**Park**”). Development of the For-Sale Townhomes on the Sale Property, the Affordable Housing Units on the Ground Lease Premises, and the Park shall be referred to as the “**Project**”.
11. On March 25, 2015, the FCRHA and CHPPENN entered into an Interim Agreement (as subsequently modified), which allowed CHPPENN to access the Property and perform diligence with regard to the Project (the “**Original Interim Agreement**”).
12. The FCRHA and CHPPENN have negotiated the forms of both the agreement by which the FCRHA intends to sell the Sale Property and the agreements by which the FCRHA intends to long-term ground lease the Ground Lease Premises.
13. The FCRHA and CHPPENN continue to negotiate certain other documents necessary to effectuate the Project.
14. The FCRHA and CHPPENN desire to enter into this Agreement in order to amend the Interim Agreement to provide for, among other matters, the long-term ground leasing of the Ground Lease Premises.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. The foregoing recitals are hereby incorporated by this reference as if fully set forth herein.

2. The Original Interim Agreement is hereby amended by adding the following text as new Sections 6 and 7:

“ 6. The Parties agree that the Project shall be constructed, operated, maintained, managed, leased (as applicable), and owned (as applicable) pursuant to, among other things, written agreements to be executed by one or more of the FCRHA, CHPPENN, or their respective permitted subsidiaries, affiliates and/or successors, as applicable, including, without limitation, the following written documents, each of which shall be substantially in the same form as attached hereto:

a. Three (3) Contracts to Ground Lease, by and between the FCRHA and CHPPENN, the forms of each of which are attached hereto as **Exhibits C-1 through C-3**, to be executed concurrently with this Agreement (collectively, the “**Contracts to Ground Lease**”);

b. Three (3) Deeds of Lease, by and between the FCRHA, as landlord, and CHPPENN, or a subsidiary or affiliate of CHPPENN, as tenant, the forms of each of which are attached hereto as **Exhibits D-1 through D-3** (the “**Ground Leases**”); and

c. Three (3) Options to Lease, by and between the FCRHA and CHPPENN, the forms of each of which are attached hereto as **Exhibit E-1 through E-3**, to be executed concurrently with this Agreement (the “**Options**”).

7. The Parties agree as follows:

a. After execution of the Purchase Agreement, the FCRHA shall not amend the Purchase Agreement without the prior written consent of CHPPENN, which consent shall not be unreasonably withheld, conditioned or delayed.

b. After execution of the Purchase Agreement, the FCRHA shall, prior to exercising any right it may have to terminate the Purchase Agreement, first discuss the facts or events giving rise to such termination right with CHPPENN; provided, however, that the foregoing shall not adversely impact the FCRHA’s rights to terminate the Purchase Agreement in its sole discretion pursuant to the terms and provisions thereof.

c. If, after its execution, the Purchase Agreement is terminated, CHPPENN shall use commercially reasonable efforts to identify a replacement purchaser for the Sale Property (a “**New Purchaser**”). The FCRHA shall have the right to approve the New Purchaser in its reasonable judgment. Any contract with a New Purchaser (the “**New Contract**”) shall be on substantially the same terms and conditions and in a form substantially similar to that of the Purchase Agreement and reasonably acceptable to the FCRHA, except that the new purchase price for the Sale Property (i) shall reflect the then fair market value of the Sale Property, as determined by an appraisal to be obtained by the FCRHA and (ii) shall in

no event be less than the purchase price of the original Purchase Agreement (the “**Original Purchase Price**”), minus the amount of the deposit, if any (the “**Deposit**”), indefeasibly paid to the FCRHA or its designee in connection with the termination of the Purchase Agreement (the “**New Purchase Price**”). If CHPPENN has identified a New Purchaser acceptable to the FCRHA who is willing to enter into a New Contract in accordance with this Section 7(c) within six months of the termination of the Purchase Agreement, then the FCRHA shall enter into such New Contract.

d. If the sum of the New Purchase Price and the Deposit exceeds the Original Purchase Price, then following the closing under the New Contract, the FCRHA’s receipt of the New Purchase Price, and closing under the Ground Leases, the FCRHA shall pay or cause to be paid to CHPPENN one-half (1/2) of the amount of the Deposit that, when added to the New Purchase Price, exceeds the Original Purchase Price, as reimbursement of a portion of CHPPENN’s predevelopment costs in connection with the development of the Affordable Housing Units on the Ground Lease Premises.

e. If using its commercially reasonable efforts CHPPENN is unable to identify a New Purchaser who is willing to enter into a New Contract in accordance with Section 7(c) within six months of the termination of the Purchase Agreement, then the FCRHA shall pay or cause to be paid to CHPPENN one-half (1/2) of the Deposit, if any, indefeasibly paid to the FCRHA or its designee in connection with a termination of the Purchase Agreement as reimbursement of a portion of CHPPENN’s predevelopment costs in connection with the development of the Affordable Housing Units on the Ground Lease Premises.

f. Notwithstanding anything herein to the contrary, the FCRHA shall have no obligation to pay any amounts to CHPPENN under Sections 7(d) or 7(e) unless and until (i) the FCRHA either (A) receives approval from the U.S. Department of Housing and Urban Development of such payment, as it concerns laws, rules, or regulations pertaining to Community Development Block Grant program income or (B) elects, in its sole discretion, to make funds available from another funding source (other than the Deposit) to pay any amount owed under Section 7(d) or 7(e), and (ii) CHPPENN delivers all plans, drawings, files, reports, and other materials created or obtained by CHPPENN in furtherance of the Project, together with approvals reasonably necessary to use the same, to the FCRHA.”

3. Except as amended herein, the terms and conditions of the Original Interim Agreement shall be and remain in full force and effect.

4. Miscellaneous:

a. Governing Law. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. 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.

b. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument.

c. No Third Party Beneficiaries. No person or other entity shall be a third party beneficiary of this Agreement.

(Remainder of Page Blank; Signatures Follow)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above-written.

FCRHA:

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

By: _____
Name: _____
Title: _____

CHPPENN:

CHPPENN I, LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

Exhibit C-1

Contract to Ground Lease – 9%

(See Attached)

Exhibit C-2

Contract to Ground Lease – Senior

(See Attached)

Exhibit C-3

Contract to Ground Lease – 4%

(See Attached)

Exhibit D-1

Form of Ground Lease – 9%

(See Attached)

Exhibit D-2

Form of Ground Lease – Senior

(See Attached)

Exhibit D-3

Form of Ground Lease – 4%

(See Attached)

Exhibit E-1

Form of Option – 9%

(See Attached)

Exhibit E-2

Form of Option – Senior

(See Attached)

Exhibit E-3

Form of Option – 4%

(See Attached)