

INTERIM AGREEMENT

This **INTERIM AGREEMENT** ("Agreement") is made this ___ day of September 2013, by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity, and not in its governmental or regulatory capacity (the "County"), and **LAKE ANNE DEVELOPMENT PARTNERS LLC**, a Virginia limited liability company ("LADP").

RECITALS:

- R-1. The County is the fee simple owner of a 16.5 acre tract of land in Reston, Virginia, collectively having tax assessment numbers as 17-2-((16))-1A and 17-2-((14))-(1)-2G, upon which certain residential apartment buildings are built and which are commonly referred to as the Crescent Apartments (the "Property").
- R-2. The Property is currently leased to the Fairfax County Redevelopment and Housing Authority ("FCRHA") pursuant to an agreement by and between the County and the FCRHA.
- R-3. The Property currently consists of five garden-style 3-story apartment buildings, containing a total of 181 units, which are currently affordable to households earning 60% or below of the area median income ("AMI"), as defined and published by the applicable federal authorities.
- R-4. On March 30, 2009, the County, in its regulatory capacity, adopted an amendment to the County's Comprehensive Plan which revised the boundaries of the Lake Anne Village Center ("LAVC") and the LAVC Commercial Revitalization Area ("CRA"), and which provided, among other things, a maximum allowable density of 935 dwelling units on "Land Unit D", which is comprised of the Property and a 0.85 acre parcel (the "Gas Station Parcel") owned by G and K Inc., a Virginia corporation (the "Gas Station Owner"), designated as Tax Map Number 17-2 ((1))-7.
- R-5. Pursuant to that certain Request for Proposal Number RFP-2000000-125, dated February 9, 2012, and issued under the auspices of the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq. (2012) (such Request for Proposal, as subsequently amended by certain addendums, collectively, the "RFP"), the County desired to enter into a contract with a developer for the redevelopment of the Property which would, among other things, achieve a comprehensive redevelopment plan that aligned with the vision of the Comprehensive Plan, including the preservation of affordable housing, the creation of additional workforce housing and a development that would serve as a catalyst for the revitalization of the LAVC.
- R-6. LADP submitted a response to the RFP (as amended, the "LADP Response") which was determined to be the most responsive to the RFP.

- R-7. The County and LADP desire to enter into this Agreement in order to initiate certain actions, set forth below, in furtherance of the LADP Response and the negotiations conducted to date.
- R-8. Given the complexity of the potential development of the Property and the shared desire of the County and LADP to commence design- and zoning-related work as soon as possible, the parties agree that it is necessary to file the necessary applications for zoning and land use approvals prior to execution of a final, full development agreement regarding the redevelopment of the Property and other parcels in the LAVC (such redevelopment, the "Project").
- R-9. Notwithstanding that a final master development agreement regarding the Project has not been executed, and with full recognition that the parties may be unsuccessful in concluding a final master development agreement regarding the Project, the County has agreed to allow LADP the right to pursue the land use planning, design, and other work activities necessary to obtain approval of the Land Use Entitlement Approvals (as defined below) and shall appoint LADP its agent with respect to the Project and the Property, subject to and in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the Recitals, which are hereby incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Term of Agreement. This Agreement shall commence on the date hereof and continue unless otherwise terminated in accordance with the terms hereof.

2. Designation of LADP as Agent.

a. The County hereby designates LADP as its agent for the limited purpose of pursuing the Land Use Entitlement Approvals with respect to the Property and the Project, subject to the terms and conditions set forth in this Agreement, and LADP hereby accepts such designation.

b. The County hereby acknowledges and agrees that LADP, as the County's agent, is hereby authorized to commence land use planning, design, and other work activities necessary to obtain the following with respect to the Property and the Project (collectively, the "Land Use Entitlement Approvals"), which shall include, without limitation:

- i. Proffered Condition Amendment (PCA) / Development Plan Amendment (DPA) and a PRC Plan application (each as defined in the appropriate regulations promulgated by the Fairfax County Department of Planning and Zoning ("DPZ"));
- ii. Conceptual approval of the Design Review Board for Reston Association;

- iii. Recommendation of the Architectural Review Board; and
- iv. Any other regulatory approvals necessary in connection with the above.

c. LADP hereby acknowledges and agrees that the agency created hereby is temporary and shall immediately terminate upon any termination of this Agreement in accordance with the terms hereof. Upon such termination of the agency created hereby, LADP shall immediately cease all work with respect to the Land Use Entitlement Approvals and, thereafter, LADP shall have no further duty or obligation to pursue the Land Use Entitlement Approvals on behalf of the County.

3. Agreement Regarding Land Use Entitlement Approval Process.

a. LADP shall (i) consult and coordinate with the County regarding the design of the Project, and (ii) provide prior written notice and request for approval regarding all submissions to be made in connection with the Land Use Entitlement Approvals. Unless otherwise waived or modified in writing by the County, LADP shall provide the County, in its proprietary capacity, a copy (in any format desired by the County, i.e.: electronic, paper, or physical copies of documents due to size or volume) of all submissions to be made in connection with the Land Use Entitlement Approvals for the County's review and approval eight (8) business days prior to LADP's anticipated filing with or submission of the same to the applicable governmental agencies. All such notices and requests required of LADP by this Section 3(a) shall not be subject to the Notice provisions of Section 6 below; instead, all Notices required in this Section 3(a) (including requests for approvals) shall be delivered to Barbara A. Byron, Director of the Office of Community Revitalization, with a copy to Rex Peters, Department of Housing and Community Development, and/or any other person(s) as may be delegated by Barbara A. Byron, and in such format as may be requested. Approval of such submissions shall be in the County's sole and absolute discretion; *provided, however*, that the County's approval of any and all such submissions shall not be unreasonably withheld on the basis of County comments that do not reasonably reflect refinement of the scope and substance of prior approved submissions, unless such comments are in response to issues or questions raised by the County, in its governmental / regulatory capacity, as part of the Land Use Entitlement Approval process. If the County fails to notify LADP in writing of either its approval or disapproval of any such submissions within eight (8) business days after its receipt of the same from LADP, then LADP may proceed with the submission of the same; however it shall be understood that such submission shall not be deemed to be approved by the County. Any County approval of submissions by LADP shall be in the County's capacity as land owner, and shall not be construed to imply approval as a regulator.

b. LADP shall file its initial land use application with the County in its regulatory capacity for the Land Use Entitlement Approvals within ninety (90) days of the date of this Agreement.

c. The County shall be obligated to diligently pursue any consent of the Board of Supervisors that may be required in connection with the Land Use Entitlement

Approvals, and to otherwise reasonably cooperate with LADP in the pursuit of the Land Use Entitlement Approvals.

d. It is further acknowledged and understood that the rezoning of the Property will require execution of proffered conditions by LADP and the County. The County and LADP shall consult and coordinate as to the substance of such proffered conditions. The County's approval and execution of the proffered conditions shall be in the County's sole and absolute discretion; provided, however, that such approval and execution shall not be unreasonably withheld, conditioned or delayed with respect to proffered conditions that (i) are reasonably related to elements of Land Use Entitlement Approval submissions previously approved by the County, in its proprietary capacity, and (ii) otherwise reflect the obligations of this Agreement and the MDA.

e. It is further acknowledged and understood that the County may decline to approve LADP's proposed Land Use Entitlement Approval submission(s) if they do not provide for the inclusion and consolidation of, at a minimum, the Gas Station Parcel and "Land Unit A", as defined in the Fairfax County Comprehensive Plan for LAVC and including Fairfax County Tax Map Parcel Numbers 17-2 ((07)) 6B2 and 17-2 ((31)) 1645, portions of Tax Map Parcels 17-2 ((07)) 6B3 and 17-2 ((08)) 6C, and a portion of the Lake Anne of Reston Condominium common areas.

f. LADP shall be responsible for all costs associated with the Land Use Entitlement Approvals (such costs, the "LADP Costs"), and the County shall not be obligated to reimburse to LADP any costs associated with the Land Use Entitlement Approvals. Upon any termination of this Agreement, LADP agrees that, pursuant to the terms and conditions of this Agreement, LADP shall (i) assign all of its rights and interests (if any) in and to any obtained Land Use Entitlement Approvals, and deliver (or cause to be delivered) originals or copies of any and all other documents related to the same to the County, and (ii) assign to the County all of its rights and interests to, and provide and deliver (or cause to be provided or delivered) to the County any and all work product produced by LADP and/or its contractors and consultants associated with the Project, together with any third-party consents necessary therefor (collectively, roman numerals (i) and (ii) in this sentence shall be referred to as the "Work Product"). The foregoing obligations of LADP shall survive the termination of this Agreement.

g. During the term of this Agreement, LADP and its agents may access the Property upon reasonable advance notice to the County – including, for purposes of this Section 3(g), notice to Rex Peters of the County's Department of Housing and Community Development – in order to conduct such activities as LADP reasonably determines are necessary or appropriate in connection with the Land Use Entitlement Approvals process. LADP shall conduct such activities in a manner so as to minimize any disturbance to the residents and operations of Crescent Apartments. LADP shall, and shall cause any of its employees or agents entering onto the Property to, deliver to the County certificates of insurance listing the County as an additional insured and evidencing general liability insurance coverage in the amount of \$1,000,000. LADP shall further (i) repair and restore any damage to the Property or the improvements thereon caused by LADP's activities (or those of its employees or agents) under this sub-section, and (ii) indemnify, defend, and hold the County harmless from and against any and all liability, cost, or

expense, including any damage to the Property or the improvements thereon, resulting or arising from LADP's activities (or those of its employees or agents) under this sub-section, except to the extent caused by the negligence or willful act or omission of the County, its agents, or employees. Notwithstanding anything herein to the contrary, neither this sub-section, nor any portion thereof, nor any other provision in this Agreement shall constitute a waiver of the County's sovereign immunity.

4. Pursuit of Master Development Agreement. The parties agree to pursue negotiations, diligently and in good faith, of a master development agreement (an "MDA") to fully provide for the development of the Project generally consistent with the RFP, the LADP Response, and the negotiations conducted to date, with the expectation of concluding negotiations by 11:59 p.m. eastern time on the date that is eighteen (18) months after the date of this Agreement (or such later date as may be mutually agreed upon in writing by the parties, the "Outside Date"). The parties further agree that execution of the MDA, by all parties, and the approval of the MDA by the Board of Supervisors of Fairfax County, Virginia are both to occur concurrently with the obtaining and approval by all applicable governmental authorities of the last of the Land Use Entitlement Approvals to be obtained. The MDA will provide, inter alia, a comprehensive agreement for the rights and responsibilities of each party regarding the entire development of the Project, including, without limitation:

- The County shall have no obligation to contribute financially to the Project;
- The purchase price(s) and/or ground rent(s), as applicable, to be paid by LADP for the Property, and the terms of such conveyances, shall be set forth in the MDA;
- LADP shall pay a deposit (10% of the purchase price of land to be sold in fee simple, together with 100% of ground rent for the first full stabilized year of operation of land to be ground leased) upon execution of the MDA that is to be non-refundable unless the County defaults under the MDA;
- Full payment for last phase of any land to be conveyed by sale, and ground rent commencement for last phase of any land to be conveyed by ground lease, must occur no later than December 31, 2018;
- Neither the sales price nor ground rent shall decline as a result of the entitlement process, changes in market economics, project financing, tax credit awards, or other circumstances;
- Values are to be expressed in terms of 2013 dollars, with discount rates or escalation factors to be discussed;
- A relocation plan for the residents of the Crescent Apartments, subject to the approval of the County and the FCRHA and that provides the option for then-current residents at the time of redevelopment to be able to live at the Property at affordable rent levels, provided they meet eligibility requirements;

- The realignment of Village Road, and the provision of at least 181 replacement affordable units must be part of the first phase of development;
- County support for the timely relocation for the Village Road right-of-way through VDOT; and
- If LADP does not acquire, directly or indirectly, Land Unit A, the County, at its option, may terminate the MDA.

5. Termination. To the extent this Agreement is terminated pursuant to any of the subsections listed below, the County shall not be obligated to reimburse LADP for the LADP costs and any other costs incurred by LADP under this Agreement, and the Work Product shall, upon written request of the County, immediately be turned over to the County as soon as reasonably possible. The provisions of this Section shall survive the termination of this Agreement.

a. In the event the parties are unable to reach agreement upon the terms and conditions of the MDA by the Outside Date, this Agreement may be terminated by the County upon written notice to LADP and the parties hereto shall have no further rights or obligations hereunder, except the terms of which shall expressly survive such termination.

b. In the event of (A) any breach of this Agreement by the County which is not cured within thirty (30) days after the County's receipt of written notice of such breach from LADP, or (B) LADP's reasonable determination that it shall be unable to obtain the Land Use Entitlement Approvals, *then*, LADP shall have the right to terminate this Agreement upon written notice to the County, and the parties hereto shall have no further rights or obligations hereunder, except the terms of which expressly survive such termination.

c. In the event of any breach of this Agreement by LADP which is not cured within thirty (30) days after LADP's receipt of written notice of such breach from the County, the County shall have the right to either (i) terminate this Agreement, or (ii) pursue any and all other remedies available to the County at law or in equity.

6. Notice. Any notices required or permitted to be given hereunder shall be deemed to have been properly given when received or refused if sent by United States certified or registered mail, return receipt requested; national overnight courier service; or delivered in hand; in each case as follows (unless changed by similar notice in writing given by the particular person whose address is to be changed):

If to the County:

Board of Supervisors of Fairfax County, Virginia
 12000 Government Center Parkway
 Fairfax, Virginia 22035-0064
 Attention: County Executive

With copies to:

Department of Community Revitalization
12055 Government Center Parkway, Suite 1048
Fairfax, Virginia 22035
Attention: Barbara A. Byron

And:

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: Ryan Wolf

If to LADP:

Republic Land Development LLC
11401 North Shore Drive
Reston, Virginia 20190
Attention: David L. Peter

With copies to:

Walsh Colucci Lubeley Emrich & Walsh, PC
2200 Clarendon Boulevard, Suite 1300
Arlington, Virginia 22201
Attention: Thomas J. Colucci, Esq.

7. Miscellaneous Provisions.

a. Appropriations. Any and all of County's financial obligations under this Agreement are subject to appropriations by the Board to satisfy payment of such obligations.

b. Attorney's Fees. In the event there arises any disputes under this Agreement and said disputes result in litigation between the parties, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees incurred by the prevailing party in any such litigation, including the value of legal services, if any, provided by the Office of the County Attorney of Fairfax County.

c. Binding Effect. This Agreement shall, be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns. Neither party hereto may assign its rights or delegate its obligations hereunder.

d. Counterparts. If this Agreement shall be executed in two or more counterpart originals, each counterpart original shall be for all purposes considered an original of this Agreement.

e. Further Assurances. At the request of either party, LADP and the County shall promptly execute and deliver such other further instruments and documents as may from time to time be requisite in order to consummate the intent of the parties provided herein.

f. Headings. The section headings are herein used for convenience of reference only and shall not be deemed to vary the content of this Agreement or the covenants, agreements, representations and warranties herein set forth or the scope of any section.

g. Incorporation. The Recitals and Exhibits are hereby incorporated into this Agreement as if fully set forth herein.

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

i. Holidays, Business Days, etc. Whenever the last day for the performance of any act required by either party under this Agreement shall fall upon a Saturday, Sunday, legal holiday, or day on which national banks doing business in the Washington D.C. area are generally closed for business, the date for the performance of any such act shall be extended to the next succeeding business day which is not a Saturday, Sunday, legal holiday, or day on which such bank is closed.

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

k. Partial Invalidity. If any provision of this Agreement shall be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof, all of which other provisions shall remain in full force and effect; and it is the intention of all the parties hereto that if any provision of this Agreement capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning which renders it valid.

l. Waiver, Modification. Failure by either party to insist upon or enforce any of its rights hereto shall not constitute a waiver thereof. This Agreement shall not be modified, amended, or altered except by a written agreement signed by each of the parties hereto.

m. Survival. Except as otherwise specifically provided herein, the provisions of this Agreement shall not survive termination hereunder.

n. Time. With respect to all time periods contained in this Agreement, it is expressly understood that time shall be of the essence.

o. Waiver of Jury Trial. Each party hereby knowingly waives trial by jury in any action, proceeding, claim or counterclaim brought by either party in connection with any matter arising out of or in any way connected with this Agreement, the relationship of the parties hereunder, the parties' ownership or use of the land subject to this Agreement, and/or any claims

of injury or damage.

p. The foregoing provisions of this Section shall survive the termination of this Agreement.

(Remainder of Page Blank; Signatures Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, acting in its proprietary capacity and not in its governmental or regulatory capacity

By: _____
Name: _____
Title: _____

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2013, by _____.

Notary Public

My Commission Expires: _____
Registration Number: _____

LADP:

**LAKE ANNE DEVELOPMENT PARTNERS
LLC**, a Virginia limited liability company

By: _____
Name: David L. Peter
Title: Manager

COMMONWEALTH OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

Subscribed and sworn to before me this ____ day of _____, 2013, by David L. Peter, Manager of Lake Anne Development Partners LLC.

Notary Public

My Commission Expires: _____
Registration Number: _____