

OPTION TO LEASE REAL ESTATE

This Option to Lease Real Estate (the “Agreement”) is made and entered into as of January __, 2022, by and between Taft-Mills Group, LLC, a North Carolina limited liability company (“TMG”), and the Town of Chapel Hill (the “Town”).

WITNESS THAT:

WHEREAS, the Town is the owner of certain real property containing approximately 7 acres located off of Jay Street in Chapel Hill, NC, having Orange County assigned parcel identification numbers of 9778-99-9279, 9788-09-1257, and 9788-09-1232, as depicted on Exhibit A attached hereto (the “Property”);

WHEREAS, TMG is applying for a 2022 allocation of low income housing tax credits (the “Tax Credits”) from the North Carolina Housing Finance Agency (“NCHFA”) to develop a multi-family apartment complex (the “Project”) on the Property (the “Purpose”);

WHEREAS, the Town has determined that the construction and operation of the Project within the corporate boundaries of the Town is of benefit to the Town in its continuing efforts to provide affordable housing to low income residential tenants;

WHEREAS, in furtherance of the foregoing purposes, TMG desires to hold an option to lease the Property, and the Town desires to grant to TMG an option to lease the Property upon the terms and conditions set forth in this Agreement;

WHEREAS, if the NCHFA allocates the Tax Credits for the Project, TMG will create a single purpose limited liability company owned and managed by TMG and Community Home Trust, a North Carolina nonprofit corporation, to own and operate the Project (the “Proposed Lessee”); and

WHEREAS, in connection with the Tax Credits, Proposed Lessee will admit an equity investor member to provide equity financing for the Project (the “Investor”).

NOW, THEREFORE, in consideration of the foregoing and in reliance on the mutual promises and covenants herein made, the receipt and sufficiency of which is hereby acknowledged, and the mutual benefits to be derived therein, the parties agree as follows:

1. GRANT OF OPTION. The Town hereby grants, bargains and conveys to TMG, and TMG hereby accepts and acquires from the Town, a sole and exclusive right and option to lease the Property upon the terms and subject to the conditions set forth herein (the “Option”) solely for the permitted Purpose set out above.
2. TERM OF OPTION. The Option and all rights appurtenant thereto shall commence on the date of this Agreement and shall continue in full force and effect for thirty-six

(36) months thereafter, unless terminated in accordance with the provisions hereof. The period between the date set forth in the first paragraph of this Agreement and the expiration or termination of the Option pursuant to this Section 2 is referred to as the “Option Term.”

3. EXERCISE OF OPTION. TMG, or the Proposed Lessee if the Option has been assigned by TMG to the Proposed Lessee, may exercise the Option during the Option Term within the time periods set out below by giving written notice (the “Option Notice”) to the Town, signed by TMG or the Proposed Lessee, of TMG’s or the Proposed Lessee’s intention to exercise the Option and setting forth the time and date of the closing of the lease transaction contemplated herein (the “Closing”). In no event shall TMG exercise the Option any earlier than receipt of notice of award of applicable tax credits from the NCHFA for the 2022 tax credit allocation year.
4. TERMS OF OPTION. At the Closing, TMG (or the Proposed Lessee) and the Town shall consummate the leasing of the Property in accordance with such terms and conditions as they shall mutually agree. Unless otherwise agreed by the parties, such terms and conditions shall include the following:
 - a. Lease Term. The lease to be entered into upon exercise of the Option (the “Ground Lease”) shall convey to the Proposed Lessee a leasehold interest in the Property for a term of not less than ninety-nine (99) years.
 - b. Annual Rental. The annual rent to be paid by Proposed Lessee for the Ground Lease shall be One Dollar and No/100 (\$1.00).
 - c. Title. The leasehold interest conveyed to the Proposed Lessee under the Ground Lease shall be free and clear of all liens and encumbrances other than those that do not unreasonably interfere with TMG’s intended development of the Property, as determined by TMG (the “Permitted Exceptions”). TMG shall obtain a title insurance commitment for the Property and if any exception noted therein is unacceptable to TMG, TMG shall notify the Town in writing and the Town shall then have 30 calendar days from the notice date to cure such unacceptable exception or provide evidence of the reasonability of the exception. If the Town fails to cure such exception within such 30-day period and provide evidence to TMG of such cure acceptable to TMG or that the exception is reasonable, then TMG shall have the right to terminate this Agreement by written notice to TMG. Any exception that prevents construction of the Project on the Property shall not be deemed a reasonable exception.
 - d. Use of Property. The use of the Property by Proposed Lessee shall be limited to the planned use as set forth in Exhibit B attached hereto and no other use without approval by the Town.

- e. Other Terms. The parties agree and understand that the development of the Property is intended to be funded, in whole or part, through the investment of equity in regard to low incoming housing tax credits, construction loan(s), permanent loan(s) and other funding sources.
5. REGULATORY APPROVALS. TMG acknowledges and agrees that (a) this Agreement shall not be construed as a grant of development rights or land use entitlements from the Town, in its regulatory capacity as a municipal body, to develop the Property or any other project, and (b) the Town, in its regulatory capacity as a municipal body, shall have final approval over the site plan for the Property and any other development applications submitted for the Property.
6. CONDITIONS PRECEDENT TO CLOSING. Upon providing the Option Notice, TMG or the Proposed Lessee, as applicable, shall be obligated to complete the transaction and to consummate the Ground Lease only upon the satisfaction of each of the following conditions as set forth below:
- a. The representations and warranties of the Town contained in this Agreement shall be true and correct in all respects as of the date hereof and on the date of Closing as though such representations and warranties were made on each date;
 - b. The Town shall be able, as of the date of Closing, to convey a leasehold interest in the Property subject only to Permitted Encumbrances;
 - c. TMG shall have obtained any and all licenses, permits or other government approvals necessary for the consummation of the transaction contemplated by this Agreement and its proposed development of the Property;
 - d. The Property, on behalf of the Proposed Lessee, shall have received an allocation of low incoming housing tax credits from the NCHFA;
 - e. TMG shall approve all aspects of the Project, including but not limited to the terms of the Ground Lease and equity and financing sources;
 - f. TMG and/or Proposed Lessee shall have secured all funding sources needed for the development and construction of the Project; and
7. REPRESENTATIONS AND WARRANTIES:
- a. The parties hereby represent, warrant and covenant to each other that the Town and TMG have the right, power, legal capacity and authority to execute, deliver and perform this Agreement and the agents who have executed this Agreement on behalf of each have the right, power, legal capacity and authority to execute, deliver and perform this Agreement.

- b. The parties desire and intend to advance the due diligence and development process for the Property with the intent to submit an application for the Tax Credits with NCHFA prior to November 2022. Consistent with that timeline, TMG and the Town shall work together in good faith to complete necessary development activities for submission of the Tax Credits application.
- c. The Town hereby represents, warrants and covenants to TMG that:
 - i. Subject to Permitted Encumbrances, the Town owns the Property and has entered into no agreements, oral or written, and is subject to no judgment, order, writ, injunction, decree, statute, rule or regulation which would limit or restrict the Town's right to enter into this Agreement and fulfill its obligations hereunder or which would prevent possession by TMG of all or any part of the Property;
 - ii. From and after the date hereof during the Option Term, the Town shall not convey the Property or any portion thereof (any easement or restriction imposed by the Town during the Option Term shall not be deemed a violation of this covenant so long as such easement does not interfere with the development of the Property in accordance with the development plans depicted in Exhibit B attached hereto); and
 - iii. This Agreement and all instruments executed or to be executed in connection herewith are, or when executed will be, legal, valid and binding, instruments enforceable against the Town in accordance with their respective terms and conditions, and upon payment in full of the Option Price, will effectively vest in TMG, only on behalf of a Proposed Lessee, an exclusive option to lease the Property for the Purpose.

8. TERMINATION OF OPTION. This Agreement shall become null and void and the Option hereby granted shall terminate without further notice upon the occurrence of any one of the following events:

- a. The conveyance of a leasehold interest in the Property from the Town to the Proposed Lessee upon the terms herein provided.
- b. TMG's written notice to terminate the Option if the NCHFA has made no allocation of 2022 tax credits to TMG/the Proposed Lessee for the Project.
- c. The conditions precedent to closing set forth in Section 6 have not been satisfied on or before the Closing date.

9. CLOSING. Closing shall occur within six (6) months after the date of the Option Notice, which date may be extended by mutual consent of the parties. At Closing, each of the parties shall deliver such other documents and perform such other

conditions as are required of them by the terms of this Agreement or which may reasonably be required in order to complete the transaction.

10. RIGHT OF ENTRY AND USE OF PROPERTY. At any reasonable time prior to the expiration of this Agreement, at TMG's sole cost, TMG and its agents, employees, contractors and representative, shall have the right to enter on the Property for the purpose of inspecting the condition of the Property and making such investigations and tests as are reasonable, including, but not limited to, surveys, environmental and geotechnical reports. TMG shall not use this right of entry, or permit this right of entry to be used, in a way which will cause waste to the Property and shall repair any damaged caused by such entry. TMG hereby fully indemnifies and holds the Town harmless from and against demands, investigations, actions, claims, lawsuits, judgments, liens and damages (including reasonable attorney fees) arising out of the activities of TMG and its agents, employees, contractors and representatives, on or with respect the Property. TMG shall be entitled to re-inspect the Property within thirty (30) days immediately preceding Closing to assure that the Property continues to be in the condition warranted herein and complies with TMG's requirements. TMG shall give the Town reasonable notice of any entrance. All inspection and testing will be conducted in compliance with applicable law.
11. ASSIGNMENT. Upon receipt of any allocation of low income housing tax credits for the Project to the Proposed Lessee, TMG may assign all of its rights and interests in the Option to the Proposed Lessee without the further consent of the Town.
12. MISCELLANEOUS.
 - a. Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by both parties hereto.
 - b. Further Assurances. Each party shall execute such other and further for the documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.
 - c. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
 - d. Entire Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.
 - e. Paragraph Headings. Captions at the beginning of each paragraph of this Agreement are solely for the convenience of the parties and are not part of this Agreement.

- f. Exhibits. All exhibits which are attached to this Agreement are incorporated herein by this reference.
- g. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The parties contemplate that they may be executing counterparts of this Agreement transmitted by facsimile or electronic transmission and agree and intend that a signature by facsimile or electronic transmission shall bind the party so signing with the same effect as though the signature were an original signature.
- h. Interpretation and Governing Law. This Agreement shall be construed as though prepared by both parties. This Agreement has been made and entered into and shall be construed, interpreted and governed by the law of the State of North Carolina. North Carolina state and federal courts shall be the exclusive venues for resolution of disputes arising out of this Agreement.
- i. Time. Time is of the essence in this Agreement.
- j. Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining parts shall remain in full force as though such invalid or unenforceable provision had not been a part of this Agreement.
- k. Notices. Notices under this Agreement may be given by fax, mail, overnight mail, electronic mail, or personal delivery. Any notice that is actually received shall be effective regardless of the manner in which it is sent or delivered.

1.

If to TMG, to:

Taft-Mills Group, LLC
 PO Box 566
 Greenville, NC 27835
 Attn.: Dustin Mills
dustin@taftmillsgroup.com

With a copy to:

Ellinger & Carr, PLLC
 2840 Plaza Place, Suite 475
 Raleigh, NC 27612
 Attn.: Sarah Goodin
sgoodin@ellingercarr.com

If to the Town, to:

With a copy to:

- m. No Joint Venture. Nothing herein shall be interpreted or construed as or creating in actuality a partnership, joint venture, or similar enterprise. Each party hereto is a separate party and shall not act or serve as agent of the other.
- n. Brokers. The parties hereby warrant and represent that neither party was represented by a real estate broker in this transaction and that, to the best of their knowledge, no commissions are owed to a third party as a result of this Agreement.

[signatures follow]

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IN WITNESS WHEREOF, the parties have executed this Agreement on this date first above written.

TAFT-MILLS GROUP, LLC
a North Carolina limited liability company

By: _____ [SEAL]
Dustin T. Mills, Manager

TOWN OF CHAPEL HILL

By: _____ [SEAL]
Name: _____
Its: _____

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Exhibit A

[Insert depiction of the three tax parcels to be leased]

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Exhibit B

[Insert excerpt from 12/1 CZ application, including site plan]

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