

STATE OF NORTH CAROLINA ) MEMORANDUM OF UNDERSTANDING FOR 300  
COUNTY OF DURHAM ) EAST MAIN STREET – AFFORDABLE HOUSING  
PROJECT

**THIS MEMORANDUM OF UNDERSTANDING** (the “MOU”) is effective as of the 21<sup>st</sup> day of JANUARY, 2020 (the “Effective Date”), and is entered into by and between DURHAM COUNTY, NORTH CAROLINA, a political subdivision and body corporate of the State of North Carolina (the “County”), and LAUREL STREET RESIDENTIAL, LLC, a North Carolina limited liability company (“Laurel Street” or “Developer”, and together with the County, the “Parties,” each a “Party”), for the development of the “Project” as further described in Paragraph D below in response to the County’s 300 and 500 East Main Development Solicitation for Development Partner Proposals dated Winter-Spring 2019 (the “Solicitation”) and in the Response to Durham County Solicitation for Development Partner Proposals – Laurel Street Residential and ZOM Living submitted on April 5, 2019 (the “Response”).

The following terms and conditions are intended to reflect the understanding of the Parties as to the material terms of development and operation of the Project.

## RECITALS

#### A. GENERAL CONDITIONS.

1. This MOU is expressly conditioned upon and subject to the parties hereto finalizing and entering into a mutually satisfactory understanding and definitive written agreement as to all aspects of the proposed transaction. Accordingly, except for Paragraph F. 7., this MOU shall not be binding upon the Parties hereto in any way except to the extent it reflects the present intent of each of the Parties to (i) diligently and in good faith proceed with the development of the Project; (ii) negotiate in good faith a definitive written agreement between Laurel Street and the County regarding the development of the Project, including the business terms and conditions contained herein, or as otherwise agreed to by the parties; and (iii) maintain appropriate communication with each party, the public and key stakeholders throughout the development of the Project. This MOU does not otherwise state all key terms and conditions required for the parties to enter into a binding contract with enforceable obligations.

2. This MOU is intended to reflect the current understanding of the Parties. This MOU grants Laurel Street the exclusive right for a period from the Effective Date until August 31, 2020 (the "Evaluation Period") to diligently, reasonably and in good faith (i) negotiate and attempt to finalize the Master Development Agreement (the "MDA") and (ii) analyze and otherwise pursue the development of the Project. The MDA will also provide Laurel Street with an exclusive right to develop the Project, subject to the terms of the MDA. If the parties have not executed the MDA by the expiration of the Evaluation Period, this MOU and any other agreements between the parties regarding the Project shall terminate except for Paragraph F.7. of the MOU, the terms of which shall survive any termination of this MOU.

3. This MOU shall commence on the Effective Date indicated above and shall continue in effect through August 31, 2020; provided, however, the term may be extended for an additional period of time upon the written consent of the parties, but shall not be extended for a

period greater than sixty (60) days without the express written approval of the Durham County Board of County Commission ("BOCC").

**B. PURPOSE.**

1. This MOU by and between the Parties is intended to accomplish the following goals:

(i) Provide a parking solution that will address Durham County employee and Health & Human Service facility customer needs and meet new demand created by the Project, and incorporate options for multiple modes of transportation;

(ii) Increase the availability of affordable housing in downtown Durham for households earning 80% Area Median Income ("AMI") and below in a mixed income and multi-generational setting;

(iii) Provide ground-floor commercial and service offerings for tenants and workers in and around the Site (as defined in Section E.1. below) and increase activity along East Main Street;

(iv) Efficiently use public investment to maximize public benefits and attract private investment; and

(v) Focus on pedestrian-scale design that creates a walkable, vibrant, urban streetscape along East Main Street.

2. This MOU is entered into to facilitate the Project pursuant to the authority conferred upon the County under North Carolina law, including but not limited to, Chapters 153A, 157 and 158 of the North Carolina General Statutes, and Session Law 2005-172. These statutes authorize redevelopment of 300 East Main Street for affordable housing, commercial uses, and construction of a County-owned parking deck to serve the Project.

**C. PARTIES.**

1. Developer. The Developer will be Laurel Street, comprising an integrated development and operating organization that specializes in the development and design of mixed-income communities and affordable housing developments throughout the Southeast.

Laurel Street's headquarters are located at 2132 Thrift Road, Suite A, Charlotte, North Carolina 28208. Laurel Street, along with the following, shall be hereinafter known together as the "Project Team."

Developer:                      Laurel Street Residential, LLC  
   Ashley's Corner, LLC

Design: Little Diversified Architectural Consulting ("Little Diversified")

Neighboring Concepts

Engineering: Stewart

Construction: Weaver Cooke and Harmon Construction Services

Legal Counsel: The Banks Law Firm, P.A.

Laurel Street shall have the right to substitute members of the Project Team, provided (i) Laurel Street, or an affiliate controlled by Laurel Street, remains the Developer for the Project; and (ii) Laurel Street obtains prior written approval from the County on any changes to the Project Team, which consent shall not be unreasonably withheld.

#### D. THE PROJECT.

The Project will consist of (i) the conveyance and reservation of appropriate property interests between Laurel Street and the County; (ii) construction of a five (5)-story affordable housing structure (the "Housing Structure"), which shall include approximately 13,800 square feet of ground-floor space for (x) commercial uses and apartment amenity space (and the apartment amenity space shall include 3,500 square feet for office leasing and tenant use); and (y) appropriate space for Pre-K/daycare classrooms, childcare services and/or similar use; (iii) construction of a county-owned public parking deck containing approximately seven hundred eighty (780) parking spaces (the "Parking Facility"), a maximum of 105 spaces will be leased to Laurel Street without charge for the residents of the affordable housing units (the Parking Facility will be constructed, owned and operated by the County, with at least 675 parking spaces reserved for County and Pre-K use); and (iv) the Housing Structure which shall provide for a public open space (the "Linear Park-300") and shall contain approximately one hundred five (105) affordable housing units over five floors with a variety of studio, one, two and three bedroom units with water, sewer, trash collection and parking included in the rent. At least nineteen (19) of the affordable housing units will serve residents earning 30% of the AMI. The 30% AMI units will benefit from a project-based subsidy in addition to tax exempt bonds and low-income housing tax credits ("LIHTCs"); provided, however, that Laurel Street reserves the right to provide nineteen (19) units at 30% AMI without any subsidy so long as it can do so without seeking funding from the County in addition to the County's loan in the amount of \$2,640,000 and grant in the amount of \$1,730,000. The Parking Facility shall include non-residential space along Queen Street.

#### E. PROJECT SITE

1. The Site. The Project site is situated on a 2.16-acre parcel identified as Tax Parcel Number 102926 (PIN 0831-09-06-5538), which is owned and controlled by the County (the "Site"). The County shall lease to Laurel Street a portion of the Site (approximately .58 acres) (the "Housing Structure Site") for the construction of approximately one hundred five (105) affordable housing units (the "300 East Main Affordable Housing Units"). A schematic design of the Site

depicting the proposed location of the Housing Structure is attached hereto as Appendix A and incorporated herein by reference.

F. PROJECT DEVELOPMENT.

1. Development Schedule. During the Evaluation Period, Laurel Street and the County shall agree upon a detailed development schedule ("Development Schedule") for the Project. The first draft of the Development Schedule shall be prepared by the Developer and submitted to the County for its review, comment, and approval on or before January 31, 2020. The Development Schedule shall be created to reflect Laurel Street's coordination with the County to mutually agree on milestones, timelines and other targeted measures to assure that the Parking Facility, Housing Structure and all other Project components will be constructed and open for use in a timely manner in accordance with the terms of this MOU. Notwithstanding the foregoing, Developer shall provide to the County monthly written updates to confirm compliance with the Development Schedule. Laurel Street understands the need for ongoing communication and coordination with the County regarding (i) the construction of the Parking Facility and other County improvements, and (ii) the construction of the Housing Structure, to reduce duplication of work and ensure completion of the Project within twenty-four (24) months of substantial completion of the Parking Facility. As used herein, the term "substantial completion" shall mean the issuance of the certificate of occupancy.

2. Development Budget. During the Evaluation Period, Laurel Street will provide a proposed development budget for the Housing Structure (the "Development Budget") to the County. The Development Budget shall include (i) sources such as LIHTC equity, tax exempt bond financing/mortgages, County loan, County grant, and other sources as needed and (ii) uses such as vertical construction costs, site work, general contractor fees, construction contingency, architect and engineering fees, permit fees, construction loan interest and fees, tax credit fees, legal expenses, developer fees, consulting fees, reserves, and other uses as needed (hereinafter collectively referred to as "Housing Structure Costs").

3. Financing. The Parties agree to use their best efforts to agree upon terms for funding the Project during the Evaluation Period and such agreed-upon terms shall be incorporated in the MDA. Notwithstanding the foregoing, the County's obligations under this MOU to construct the Parking Facility are conditioned upon receipt by Laurel Street of written notification of housing credit awards ("Notice of Award") of bond volume cap and LIHTCs for the construction of the Housing Structure from the North Carolina Housing Finance Agency on or before August 31, 2020 ("Notice Deadline"); provided, however, if Laurel Street shall fail to close on the financing for the Housing Structure within the timeframe stated in Section F.5. below, County shall have the right to terminate the MDA and pursue other development opportunities to complete the Project. Furthermore, Laurel Street shall provide a copy of the Notice of Award to County on or before the Notice Deadline. Nothing herein shall prevent Laurel Street from entering into any other mode of financing with respect to any portion of the Project, provided that, without the prior written consent of the County, Laurel Street shall not sell, assign, encumber, convey or transfer the Housing Site or any portion thereof that has been leased to Laurel Street.

4. Project Design and County Approval. The parties acknowledge that preliminary designs of the Project were prepared by Little Diversified and Neighboring Concepts.

Drawings were provided as a part of the Solicitation and contained conceptual mixed-use site plans; provided, however, Laurel Street and the County acknowledge that the design for the Project has not been completed. Furthermore, Laurel Street acknowledges that the County has architectural review rights, and the design and architecture of the Housing Structure as an appendage to the Parking Facility shall be subject to County written approval, which approval shall not be unreasonably withheld. The County shall approve of the updates to the design and architecture of the Housing Structure so long as said updates and full plans and specifications are substantially in conformance with schematic designs and elevations submitted to and approved by the County Commissioners during its working session on December 2, 2019. Laurel Street agrees to work with the County to provide the County with an opportunity to timely review and provide feedback on the schematic design and elevations of the Housing Structure. Upon receipt by the County of the Housing Structure schematic design, the County shall have ten (10) business days from the date of receipt to review the schematic design and provide feedback to Laurel Street. Laurel Street shall comply with all County ordinances and regulations. Notwithstanding the foregoing, in the event Laurel Street fulfills all of its obligations under this MOU and the County decides to make material changes to the Project affecting the size, scope, unit mix, retail requirements, or elevations which necessitate material design changes and increases the Development Budget by ten percent (10%) or more, County shall reimburse Laurel Street for all its actual costs and expenses related to the Project not to exceed \$100,000.00.

5. Execution of Construction Contract. The County agrees to enter into a construction contract with its general contractor for the construction of the Parking Facility upon receipt by the County of a copy of the Notice of Award of bond volume cap and LIHTCs for the construction of the Housing Structure from the North Carolina Housing Finance Agency. Laurel Street agrees to enter into a construction contract with the General Contractor for the construction of the Housing Structure at the closing of the financing for the Housing Structure, which shall occur within ninety (90) days following “substantial completion” of the Parking Facility by the County.

6. Construction Schedule. The construction schedule will be determined by mutual agreement between the Parties. Laurel Street acknowledges that the public facilities included in the Project shall be constructed in accordance with approved architectural plans and design and within the budget agreed upon by the Parties to meet the needs of the County.

7. Surety. Within three (3) business days following execution of this MOU, Laurel Street will deposit the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the “Surety Amount”) with a mutually-approved escrow agent pursuant to terms of the escrow agreement (the “Escrow Agreement”) attached hereto as Exhibit A. The Surety Amount will be deposited in an account held with a national banking association. In the event that Laurel Street is able to secure the necessary financing for the Housing Structure component of the Project on terms satisfactory to it, in its sole and absolute discretion, but elects not to proceed with the Project by the expiration of the Evaluation Period, the Surety Amount shall be paid to the County as liquidated damages. Notwithstanding the foregoing, in the event that Developer has met all of its obligations pursuant to Section L of the MOU, including approval of its final application to the NCHFA (as defined in Section K.2 below), the Surety Amount shall be released to Laurel Street by the Escrow Agent and used by Laurel Street to pay Project costs. The parties hereto acknowledge that the Escrow Agent will only be obligated to release the Surety Amount if the Escrow Agent is provided with written

instructions executed by the County and Laurel Street and the Escrow Agent will be fully protected in releasing such directed amounts.

**G. MINORITY AND WOMEN BUSINESS ENTERPRISE ("MWBE").**

Laurel Street shall implement a practical plan to achieve 30% MWBE participation for the Project inclusive of a 20% commitment to ethnic minority business enterprises. The 30% MWBE participation shall be inclusive of construction costs, construction management, design and engineering, legal, developer and consultant fees. Notwithstanding the foregoing, the MWBE information shall be reviewed by the Durham County Purchasing Division for MWBE compliance at the time of construction bidding pursuant to Durham County MWBE policy.

**H. FORCE MAJEURE.**

For purposes of this MOU, a delay in, or failure of, performance by any Party, shall not constitute a default, nor shall the Developer or the County be held liable for loss or damage or in breach of this MOU, if and to the extent that such delay, failure, loss or damage is caused by an occurrence beyond the reasonable control of such Party, and its agents, employees, contractors, subcontractors and consultants, including results from Acts of God or the public enemy, compliance with any order or request of any governmental authority or person authorized to act thereof, acts of declared or undeclared war, public disorders, rebellion, sabotage, revolution, earthquake, floods, riots, strikes, labor or equipment difficulties, delays in transportation, inability to obtain necessary materials or equipment or permits due to existing or future laws, rules or regulations of governmental authorities or any other causes, whether direct or indirect, which by the exercise of reasonable diligence said Party is unable to prevent.

**I. CONVEYANCE OF PROPERTY INTERESTS.**

Pursuant to the terms and conditions of this MOU, the parties will execute an option to lease the Housing Structure Site (the "Option") in the form attached hereto as Exhibit B in accordance with the Development Schedule. Laurel Street shall exercise its option to lease (pursuant to the terms of the Option) and shall enter into a ground lease agreement with the County for a term necessary to satisfy the requirements of tax exempt bond and LIHTC financing, not to exceed ninety-nine (99) years (the "Ground Lease") for the construction and operation of the Housing Structure, which Ground Lease shall include affordability restrictions for the 105 affordable housing units during the entire term of the Ground Lease. Commencing in year thirty-six (36) of the Ground Lease term, the Parties agree to negotiate in good faith the terms and conditions of a new Ground Lease to include affordability restrictions; provided, however, that the Parties can secure additional future financial support from other sources mutually pursued by the Parties for the maintenance, upkeep and/or rehabilitation of the 105 affordable housing units after their useful life of forty (40) years. In the event the Parties cannot agree upon a new Ground Lease and close on the financing for the Project prior to the end of the fortieth (40<sup>th</sup>) year of the Ground Lease term, the Ground Lease shall terminate and the Housing Structure Site will revert back to the County.

J. OTHER MATERIAL TERMS AND CONDITIONS.

The Parties agree to identify and negotiate all other material terms and conditions of the proposed transaction between the parties during the Evaluation Period.

K. SCHEDULE OF MILESTONE TARGETS.

Following the execution of the MOU by the Parties, the Parties shall pursue completion of the milestone targets as set forth below:

1. Laurel Street shall submit a MWBE compliance plan on or before April 30, 2020.

2. Laurel Street shall submit its preliminary and final applications to the North Carolina Housing Finance Agency ("NCHFA") for bond volume cap and four percent (4%) LIHTCs, secure its loan commitments, and finalize all documentation for the submission on or before May 15, 2020.

3. Laurel Street shall negotiate to reduce the parking requirements of the NCHFA Qualified Allocation Plan (QAP) and notify the County of said parking requirements prior to submission of the preliminary application for volume cap and LIHTCs on January 24, 2020.

4. Laurel Street shall complete its due diligence (i.e., tests and surveys reasonably sufficient to determine the condition of the Housing Structure Site, including title examination, market, geological, environmental and structural analyses) at its sole expense and risk on or before the expiration of the Evaluation Period.

5. Laurel Street shall provide the proposed Development Budget during the Evaluation Period.

6. Laurel Street shall enter into the Option to acquire such property interests as necessary for the financing of the Housing Structure.

7. Laurel Street agrees to schedule monthly updates on changes to the Development Schedule and Development Budget with County staff and the Development Finance Initiative ("DFI"), as necessary.

8. Within twenty (20) business days of the execution of this MOU, the County shall deliver to Laurel Street the following: (i) all boundary or other physical surveys; (ii) all title insurance policy(ies) with copies of exceptions; and (iii) all environmental site assessments (collectively, the "Property Documents"). Notwithstanding the foregoing, the County makes no representation or warranty regarding the currency or accuracy of any of the Property Documents. Laurel Street acknowledges that its receipt of the Property Documents does not in any way relieve Laurel Street from conducting such surveying; title examination; architectural, engineering, environmental, topographical, geological, soil, developmental, inspections and other due diligence reasonably sufficient to determine the condition of the Housing Structure Site.

9. The County will convey to Laurel Street necessary easements and encroachments appurtenant to the Housing Structure Site for access over, on and across designated entranceways, driveways and ramps and walkways as necessary for vehicular and pedestrian access to and from the Project, and other easements, rights and obligations to facilitate the development, construction, existence and operation of the Project.

10. The Parties shall negotiate the lease and/or sublease of the Pre-K classroom space to include the terms of operation and structure.

11. The Parties shall negotiate and finalize the Option for the Housing Structure Site prior to the date for submission of the preliminary application to the North Carolina Housing Finance Agency for volume cap and LIHTCs on January 24, 2020.

12. The County shall deliver its loan commitment for \$2,640,000 prior to Laurel Street's submission of its full application to the North Carolina Housing Finance Agency for volume cap and LIHTCs on May 15, 2020.

13. The County shall deliver its grant commitment for \$1,730,000 prior to Laurel Street's submission of its full application to the North Carolina Housing Finance Agency for volume cap and LIHTCs on May 15, 2020.

#### L. INITIAL LAUREL STREET DEVELOPER OBLIGATIONS.

Laurel Street and the County intend that the MDA will include provisions which provide for the following obligations of the Developer:

1. Laurel Street shall be solely responsible for the entire construction development costs including hard and soft costs of the Project, including, without limitation, the costs and maintenance of Linear Park-300, but excluding costs attributable to the County (i.e., the Parking Facility) pursuant to County obligations as set forth herein.

2. Laurel Street will be responsible for securing all permits including environmental, building and other such regulatory permits as required for the construction of the Housing Structure at Laurel Street's sole cost and expense.

3. Laurel Street agrees to enter into a 99-year (the "Term") Ground Lease as described in Section I above, which shall include affordability restrictions related to affordable housing coextensive with the Term of the Ground Lease, and acquire such property interests as necessary for the Project.

4. Laurel Street agrees to lease 105 parking spaces in the newly constructed Parking Facility pursuant to the terms of a garage parking lease (the form of which shall be attached to the MDA) and to comply with all regulations regarding the use of the Parking Facility.

5. DFI is a nonprofit, charitable program of the University of North Carolina at Chapel Hill School of Government ("SOG") that has provided development services related to the Project. In accordance with the Solicitation, Laurel Street agrees to comply with the agreement between the County and SOG dated June 19, 2017 (the "SOG Agreement"), and incorporated



herein by reference, whereby the selected development partner agrees to pay a fee equal to one and one half percent (1.5%) of the total development costs to the SOG as part of any development services agreement related to the development of the Project.

6. Laurel Street agrees to schedule monthly updates on changes to the Development Schedule and Development Budget with County staff and DFI, as necessary.

7. Laurel Street agrees to schedule and provide quarterly updates on the Project to the BOCC as requested by the County.

8. Laurel Street shall submit a commercial tenant identification plan that includes opportunities for appropriate community engagements.

9. Laurel Street shall use its best efforts to enter into an agreement or obtain a commitment from the Durham Housing Authority for RAD units or traditional project-based housing choice vouchers for the Project prior to submission of the full application for volume cap and LIHTCs in May 2020.

10. Laurel Street will pay within three (3) business days following the execution of the MDA the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "MDA Amount") to the County.

11. To the extent not inconsistent with the MOU, Laurel Street shall comply with all of the material provisions of the Solicitation and the Response including, but not limited to, the "Timeline" and "Execution Plan" referenced therein. In the event of any inconsistency between the terms and conditions of the MOU on the one hand and the Solicitation and Response on the other hand, the terms and conditions of the MOU shall govern.

#### M. COUNTY OBLIGATIONS.

The Parties expressly intend that the MDA will include provisions which provide for the following obligations of the County:

1. The County agrees to enter into a ground lease of .58 acres of the Site to Laurel Street to construct, own and operate the Housing Structure for a period necessary to satisfy the financing for tax exempt multi-family housing bonds and 4% LIHTCs (typically 99 years) for a nominal annual rent of \$100.00.

2. The County agrees that the leasehold interest conveyed to Laurel Street shall be free and clear of all liens and encumbrances, except as otherwise provided herein.

3. Upon the receipt of a reasonable cost estimate, the County agrees to pay one hundred percent (100%) of the entire costs (hard and soft costs) of the construction of the Parking Facility. The County agrees that two sides of the Parking Facility shall contain at least two (2) structurally independent two hour rated walls to accommodate the residential development attached to such walls. Additionally, the County's construction of the Parking Facility will include full build out of the commercial space on Queen Street and construction of the concrete portion of the parking podium for the Pre-K space and amenity space on Main Street. Laurel Street will be

responsible for the build out of the space underneath the podium. The County further agrees to be solely responsible for the design and construction of the Parking Facility.

4. The County shall assist Laurel Street in all legal and customary ways with any regulatory permits for the Housing Structure, if required, to the extent practicable and reasonably possible; provided, however, Laurel Street shall bear all costs associated with obtaining such permits.

5. The County shall schedule monthly updates with Laurel Street and shall report monthly on movement toward finalizing the Parking Facility construction plans.

6. Provided Laurel Street is successful in closing on the necessary financing for the construction of the Housing Structure as further described in the Development Budget, the County shall make a loan to the owner of the Housing Structure in the original amount of \$2,640,000 with interest at three percent (3%) for a term of the lesser of (i) twenty (20) years, or (ii) the term of the first mortgage on the subject property for construction, equipping and operation of the Housing Structure.

7. Provided Laurel Street is successful in closing on the necessary financing for the construction of the Housing Structure as further described in the Development Budget, the County shall make a grant to the owner of the Housing Structure in the amount of \$1,730,000 for the construction, equipping and operation of the Housing Structure.

8. Upon completion of the Parking Facility, the County shall make at least 105 parking spaces available to residents of the affordable housing units free of charge.

9. The County shall pay their own legal costs and expenses for the negotiation of the MOU, MDA, and all subsequent negotiations related to the Parking Facility and Housing Structure.

#### N. STATEMENT OF INTENT.

The undersigned acknowledge and agree that the Project terms described in this MOU are preliminary statements of intent of the parties and are subject to any and all necessary County approvals, procedures and definitive documents setting forth the complete agreement and understanding of the parties in form and in content satisfactory to the County and Laurel Street.

#### O. EVALUATION PERIOD AGREEMENTS.

During the Evaluation Period, Laurel Street and the County shall prepare and execute the following agreements:

1. Loan commitment prepared by the County confirming the loan terms, including without limitation, the loan amount, interest rate, term of the loan, amortization period, anticipated security interest on the property, lien position, and source of funding for the loan;

2. All necessary grant documentation prepared by the County (the "Durham County Grant") outlining the terms and conditions of the Durham County Grant;

3. Escrow Agreement;
4. Option.
5. Parking Lease Agreement
6. Form of Construction Contract for Parking Facility
7. Management Agreement by and between the County and Laurel Street for the leasing and operation of the Pre-K space and commercial space along Queen Street.
8. Pre-K Lease Agreement
9. Commercial Space Lease Agreement

P. MISCELLANEOUS.

1. Modifications. This MOU may only be modified in writing signed by Laurel Street and County. Should there be a conflict between this MOU, the Solicitation and the Response, the terms of this MOU shall be controlling.

2. Signature. This MOU may be signed in counterparts; each counterpart shall be considered an original.

3. County Action. Any act, obligation or action required in this MOU to be taken by the County or its BOCC may, in the discretion of the County, be taken by the BOCC, the County Manager or his designee and such action shall be deemed official action of the County.

4. Assignment. Except as otherwise provided herein, Laurel Street shall not assign, transfer or convey any of rights, title and interests hereunder or delegate any of the obligations or duties required to be kept or performed by it hereunder without the prior written consent of the County in the County's sole discretion.

5. No Partnership. Nothing contained in this MOU shall be deemed or construed to create a partnership or joint venture between the County and Laurel Street, or cause Laurel Street or the County to be responsible in any way for the debts or obligations of the other or those of any other party.

6. E-Verify. For agreements that include construction or services, employers and their subcontractors with 25 or more employees in North Carolina as defined in Article 2 of Chapter 64 of the NC General Statutes must comply with E-Verify requirements to contract with the County. E-Verify is a Federal program operated by the US Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law. By executing this MOU, Developer certifies that Developer complies with the requirements of the E-Verify program.

7. Iran Divestment Act Certification. Developer certifies that, as of the date listed below, it is not on the Final Divestment List as created by the State Treasurer pursuant to

North Carolina General Statutes Section 143-6A-4. In compliance with the requirements of the Iran Divestment Act and North Carolina General Statutes Section 143C-6A-5(b), Developer shall not utilize in the performance of the contract any subcontractor that is identified on the Final Divestment List.

8. Governing Law; Jurisdiction and Venue. The transactions contemplated hereunder and the validity and effect of this Agreement are exclusively governed by, and shall be exclusively construed and enforced in accordance with, the laws of the State of North Carolina, except for the state's conflict of law rules. Laurel Street consents to jurisdiction over it and to venue in Durham County.

9. Time is of the Essence. Time is of the essence for this Agreement.

Q. RELEASE OF INFORMATION.

The Parties acknowledge that the information relating to the Project is subject to disclosure under the North Carolina Public Records Act, Chapter 32 of the North Carolina General Statutes, except any such information that the County is not required or authorized to disclose, pursuant to North Carolina General Statutes Section 132-1.2. It is understood, however, that nothing in this MOU shall preclude either Party from discussing the substance or any relevant details of the transaction contemplated in this Agreement with any of its attorneys, accountants, professional consultants or potential lenders, as the case may be, or prevent the holding of public BOCC meetings in compliance with applicable laws.

This MOU is entered into by the Parties through their duly and respective authorized representatives, as of the Effective Date.


[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this MOU to be duly executed as of the date first above written.

LAUREL STREET RESIDENTIAL, LLC,  
a North Carolina limited liability company (SEAL)

By:   
Name: Dionne Nelson  
Title: President and CEO

COUNTY OF DURHAM, North Carolina (SEAL)

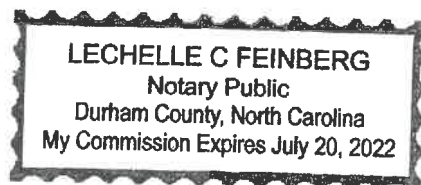
By:   
Name: Wendell M. Davis  
Title: County Manager

ATTEST:  
By:   
County Clerk

APPROVED AS TO FORM

By:   
County Attorney

  
Notary Public



## **EXHIBIT A TO MEMORANDUM OF UNDERSTANDING**

### **FORM ESCROW AGREEMENT**

This Escrow Agreement (the "Agreement") is made as of the \_\_\_\_ day of January, 2020, by and between DURHAM COUNTY, NORTH CAROLINA, a political subdivision and body corporate of the State of North Carolina (the "County"); LAUREL STREET RESIDENTIAL, LLC, a North Carolina limited liability company ("Developer"); and U.S. Bank, National Association (the "Escrow Agent").

### **RECITALS**

1. County and Developer are parties to a certain Memorandum of Understanding dated January \_\_\_\_, 2020 (the "MOU"), relating to the development of the 300 East Main Street Project in Durham, North Carolina (the "300 East Main Project").
2. Pursuant to Paragraph F.7 of the MOU, a copy of which is attached to this Agreement as Exhibit A ("Surety Provision"), Developer is required to deposit with Escrow Agent the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Surety Amount") to be held and applied in accordance with the provisions of Paragraph F.7 of the MOU.
3. The parties hereto now desire to establish the terms and conditions by which the Surety Amount shall be held and disbursed as more particularly set forth herein.
4. All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the MOU.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the premises herein contained, the parties hereto agree as follows:

1. Escrow Agent. County and Developer hereby appoint Escrow Agent as the escrow agent for the Surety Amount and authorize and direct Escrow Agent to establish and administer the Surety Amount in accordance herewith. By its execution of this Agreement, Escrow Agent accepts such appointment and agrees to act in accordance with the instructions and agreements hereunder. Escrow Agent's fee for its services under this agreement will be in accordance with the fee schedule attached as Schedule B and shall be paid by Developer.
2. Escrow. Concurrently with the execution and delivery of this Agreement to Escrow Agent, Developer has wired the Surety Amount to Escrow Agent. Escrow Agent hereby acknowledges receipt of the Surety Amount and agrees to deposit the Surety Amount in an escrow account (the "Escrow Account") at U.S. Bank, National Association. The Escrow Agent shall hold the Surety Amount uninvested.
3. Disbursement Instructions. Escrow Agent shall hold and disburse the Surety in accordance with the terms of and conditions of Section F. 7 of that certain Memorandum of

Understanding For 300 East Main Street – Affordable Housing Project dated January \_\_\_, 2020 (the “MOU”), attached hereto.

4. Attorneys’ Fees. Should either Developer or County institute any judicial or other legal action or proceeding to enforce any provision of this Agreement or for damages by reason of alleged breach of any provision hereof or for a declaration of rights hereunder, or should Escrow Agent be entitled to recover legal fees under Paragraph 7 below, the prevailing party in such action, on trial or appeal, shall be entitled to receive all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred by such prevailing party in connection with such action or proceeding and the non-prevailing party shall have responsibility for the legal fees to which Escrow Agent may be entitled under Paragraph 7.

5. Duties and Liability of Escrow Agent.

(a) Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no duties shall be implied. Escrow Agent has no fiduciary or discretionary duties of any kind. Escrow Agent’s permissive rights shall not be construed as duties. Escrow Agent shall have no liability under and no duty to inquire as to the provisions of any document other than this Agreement, including without limitation any other agreement between any of the parties hereto or any other persons even though reference thereto may be made herein and whether or not a copy of such document has been provided to Escrow Agent. Escrow Agent’s sole responsibility shall be for the safekeeping of the Surety Amount in accordance with Escrow Agent’s customary practices and disbursement thereof in accordance with the terms of this Agreement. Escrow Agent shall not be responsible for or have any duty to make any calculations under this Agreement, or to determine when any calculation required under the provisions of this Agreement should be made, how it should be made or what it should be, or to confirm or verify any such calculation. Escrow Agent shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. This Agreement shall terminate upon the distribution of all the Surety Amount pursuant to any applicable provision of this Agreement, and Escrow Agent shall thereafter have no further obligation or liability whatsoever with respect to this Agreement or the Surety Amount.

(b) Escrow Agent shall not be liable for any action taken or omitted by it in good faith except to the extent that a court of competent jurisdiction determines, which determination is not subject to appeal, that Escrow Agent’s gross negligence or willful misconduct in connection with its material breach of this Agreement was the sole cause of any loss to Developer or County. Escrow Agent may retain and act hereunder through agents, and shall not be responsible for or have any liability with respect to the acts of any such agent retained by Escrow Agent in good faith.

(c) Escrow Agent may rely upon any notice, instruction, request or other instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent believes to be genuine and to have been signed or presented by the person or parties purporting to sign the same. In no event shall Escrow Agent be liable for (i) acting in accordance with or conclusively relying upon any instruction, notice, demand, certificate or document believed by Escrow Agent to have been created by or on behalf of Developer or County, (ii) incidental, indirect, special, consequential or punitive damages or penalties of any kind (including, but not limited to lost profits), even if Escrow

Agent has been advised of the likelihood of such damages or penalty and regardless of the form of action or (iii) any amount greater than the value of the Surety Amount as valued upon deposit with Escrow Agent.

(d) Escrow Agent shall not be responsible for delays or failures in performance resulting from acts of God, strikes, lockouts, riots, acts of war or terror, epidemics, governmental regulations, fire, communication line failures, computer viruses, attacks or intrusions, power failures, earthquakes or any other circumstance beyond its control. Escrow Agent shall not be obligated to take any legal action relating to the Surety Amount, this Agreement or the Underlying Agreement or to appear in, prosecute or defend any such legal action or to take any other action that in Escrow Agent's sole judgment may expose it to potential expense or liability. Developer and County are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. Escrow Agent shall have no liability to Developer or County, their respective heirs, legal representatives, successors and assigns, or any other party, should any of the Surety Amount escheat by operation of law.

(e) Escrow Agent may consult, at Developer's and County's cost, legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving this Agreement, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the advice of such counsel. Developer and County agree to perform or procure the performance of all further acts and things, and execute and deliver such further documents, as may be required by law or as Escrow Agent may reasonably request relating to its duties hereunder. When any action is provided for herein to be done on or by a specified date that falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day.

(f) If any portion of the Surety Amount is at any time attached, garnished or levied upon, or otherwise subject to any writ, order, decree or process of any court, or in case disbursement of Surety Amount is stayed or enjoined by any court order, Escrow Agent is authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders, decrees or process so entered or issued, including but not limited to those which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction; and if Escrow Agent relies upon or complies with any such writ, order, decree or process, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even if such order is reversed, modified, annulled, set aside or vacated.

(g) Escrow Agent and any stockholder, director, officer or employee of Escrow Agent may buy, sell and deal in any of the securities of any other party hereto and contract and lend money to any other party hereto and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude Escrow Agent from acting in any other capacity for any other party hereto or for any other person or entity.

(h) In the event instructions, including funds transfer instructions, address change or change in contact information are given to Escrow Agent (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile or otherwise, Escrow Agent is authorized but shall not be required to seek confirmation of such instructions by telephone call-



back to any person designated by the instructing party on Schedule A hereto, and Escrow Agent may rely upon the confirmation of anyone purporting to be a person so designated. The persons and telephone numbers for call-backs may be changed only in writing actually received and acknowledged by Escrow Agent and shall be effective only after Escrow Agent has a reasonable opportunity to act on such changes. If Escrow Agent is unable to contact any of the designated representatives identified in Schedule A, Escrow Agent is hereby authorized but shall be under no duty to seek confirmation of such instructions by telephone call-back to any one or more of Developer's or County's executive officers ("Executive Officers"), as the case may be, which shall include the titles of Chief Executive Officer, President and Vice President, as Escrow Agent may select. Such Executive Officer shall deliver to Escrow Agent a fully executed incumbency certificate, and Escrow Agent may rely upon the confirmation of anyone purporting to be any such officer. Developer and County agree that Escrow Agent may at its option record any telephone calls made pursuant to this Section. Escrow Agent in any funds transfer may rely solely upon any account numbers or similar identifying numbers provided by Developer or County to identify (i) the beneficiary, (ii) the beneficiary's bank, or (iii) an intermediary bank, even when its use may result in a person other than the beneficiary being paid, or the transfer of funds to a bank other than the beneficiary's bank or an intermediary bank so designated. Developer and County acknowledge that these optional security procedures are commercially reasonable.

6. Resignation. In the event of a dispute between Developer and County sufficient in the sole discretion of Escrow Agent to justify it doing so, upon giving thirty (10) days prior written notice to the parties, Escrow Agent may resign. If Developer and County do not furnish written instructions, approved by both of them authorizing release or transfer of the Surety Amount within such ten (10) day period, then Escrow Agent shall be entitled to tender the Surety Amount into the registry or custody of any court of competent jurisdiction, together with such legal pleadings as Escrow Agent may deem appropriate, and upon such action the Escrow Agent shall be discharged from all further duties and liabilities under this Agreement.

7. Indemnity. Developer and County, jointly and severally, shall indemnify and hold harmless Escrow Agent and each director, officer, employee and affiliate of Escrow Agent (each, an "Indemnified Party") upon demand against any and all claims (whether asserted by Developer and County or any other person or entity and whether or not valid), actions, proceedings, losses, damages, liabilities, penalties, costs and expenses of any kind or nature (including without limitation reasonable attorneys' fees, costs and expenses) (collectively, "Losses") arising from this Agreement or Escrow Agent's actions hereunder, except to the extent such Losses are finally determined by a court of competent jurisdiction, which determination is not subject to appeal, to have been directly caused solely by the gross negligence or willful misconduct of such Indemnified Party in connection with Escrow Agent's material breach of this Agreement. Developer and County further agree, jointly and severally, to indemnify each Indemnified Party for all costs, including without limitation reasonable attorneys' fees, incurred by such Indemnified Party relating to the enforcement of Developer and County obligations hereunder. Each Indemnified Party shall, in its sole discretion, have the right to select and employ separate counsel with respect to any action or claim brought or asserted against it, and the reasonable fees of such counsel shall be paid upon demand by Developer and County jointly and severally. The obligations of Developer and County under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

8. Compensation of Escrow Agent: Fees and Expenses. Developer and County agree, jointly and severally, to compensate Escrow Agent upon demand for its services hereunder in accordance with Schedule B attached hereto. The obligations of Developer and County under this Section shall survive any termination of this Agreement and the resignation or removal of Escrow Agent.

9. Notices. The joint written direction required to be delivered to the Escrow Agent in accordance with the provisions of Paragraph F.7 of the MOU with respect to the Surety Amount shall be sent by the parties by electronic mail (email) at the email addresses for the parties set forth below. All other notices or demands under this Agreement shall be in writing, signed by the party giving the same and shall be deemed to be duly given only if delivered to the applicable addresses set forth below either (i) in person; (ii) by recognized overnight courier, including Federal Express or other reputable overnight courier service; (iii) by certified or registered mail, return receipt requested; or (iv) by email transmittal on any business day and shall be effective upon receipt, provided that the notice shall also be sent on the same business day by Federal Express or other reputable overnight courier service. Notice shall be deemed to have been duly given upon delivery thereof.

County: Durham County  
Office of the County Attorney  
200 East Main Street  
2<sup>nd</sup> Floor, Old Courthouse  
Durham, NC 27701  
Attn: Lowell L. Siler, Esq.,  
County Attorney  
Email: lsiler@dconc.gov

with a copy to: Parker Poe Adams & Bernstein LLP  
Three Wells Fargo Center  
401 South Tryon Street, Suite 3000  
Charlotte, NC 28202  
Attn: Anthony A. Fox, Esq.  
Email: anthonyfox@parkerpoe.com

Developer: Laurel Street Residential  
2132 Thrift Road, Suite A  
Charlotte, NC 28208  
Attn: Dionne Nelson  
Email: dnelson@laurelstreetres.com

with a copy to: The Banks Law Firm, P.A.  
4309 Emperor Boulevard, Suite 225

Durham, North Carolina 27703  
Attn: Sherrod Banks  
Email: sbanks@bankslawfirm.com

Escrow Agent: U.S. Bank, National Association  
Global Corporate Trust  
5540 Centerview Drive, Suite 200  
Raleigh, North Carolina 27606  
Attn: Shawna L. Hale  
Shawna.hale@usbank.com

Addresses for notices may be changed in the same manner provided for giving notices but shall not be effective until ten (10) days elapse after their receipt.

10. Binding Effect. Except as otherwise expressly provided herein, this Agreement shall bind and inure to the benefit of Escrow Agent, County, and Developer and their respective, successors and assigns.

11. Entire Agreement; Modification. This Agreement constitutes the entire agreement between Escrow Agent, County, and Developer pertaining to the subject matter hereof and supersedes all prior agreements, understandings and representations among them with respect to the subject matter hereof. This Agreement may not be modified, amended, supplemented or otherwise changed, except in writing executed by County, Developer, and Escrow Agent.

12. Counterparts. This Agreement and any amendment hereto may be executed in any number of counterparts and by each party hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of this date first above written.

LAUREL STREET RESIDENTIAL, LLC,  
a North Carolina limited liability company (SEAL)

By: [Signature]  
Name: Dionne Nelson  
Title: President and CEO

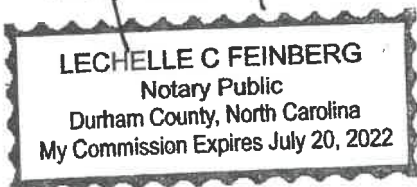
COUNTY OF DURHAM, North Carolina (SEAL)

By: [Signature]  
Name: Wendell M. Davis  
Title: County Manager

ATTEST:  
By: [Signature]  
County Clerk

APPROVED AS TO FORM

By: [Signature]  
County Attorney  
By: [Signature]  
Notary Public



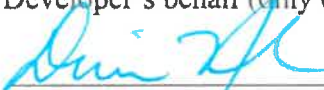
ESCROW AGENT: U.S. Bank, National  
Association

By: [Signature]  
Name: Shawna L. Hale  
Title: Vice President

## SCHEDULE A

Each of the following person(s) is a **Developer Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on Developer's behalf (only one signature required):

Dionne Nelson  
Name

  
Specimen signature

704-561-5235  
Telephone No.

Ronald H. Stewart  
Name

  
Specimen signature

614-832-9579  
Telephone No.

Lee M. Cochran  
Name

  
Specimen signature

704-561-5230  
Telephone No.


If only one person is identified above, the following person is authorized for call-back confirmations:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number


Each of the following person(s) is a **County Representative** authorized to execute documents and direct Escrow Agent as to all matters, including fund transfers, address changes and contact information changes, on County's behalf (only one signature required):

Susan Tezai  
Name

  
Specimen signature

919-560-0039  
Telephone No.

Jessica Brown-Linton  
Name

  
Specimen signature

919-560-0063  
Telephone No.

Tiffany Long  
Name

  
Specimen signature

919-560-0075  
Telephone No.

If only one person is identified above, the following person is authorized for call-back confirmations:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

## Schedule B



### Schedule of Fees for Services as Escrow Agent

**Escrow Agent- Annual fee for the standard escrow agent services associated with the administration of the escrow. Administration fees are payable in advance**

**Amount**  
\$500 for the first  
escrow  
\$250 for any additional  
escrow

**Direct Out of Pocket Expenses.** Reimbursement of expenses associated with the performance of our duties, including but not limited to publications, legal counsel's fees and expenses after the initial closing, travel expenses, and filing fees will be billed at cost.

**Extraordinary Administration Services.** Extraordinary Administration Services ("EAS") are duties, responsibilities or activities not expected to be provided by the trustee or agent at the outset of the transaction, not routine or customary, and/or not incurred in the ordinary course of business, and may require analysis or interpretation. Billing for fees and expenses related to EAS is appropriate in instances where particular inquiries, events or developments are unexpected, even if the possibility of such circumstances could have been identified at the inception of the transaction, or as changes in law, procedures, or the cost of doing business demand. At our option, EAS may be charged on an hourly (time expended multiplied by current hourly rate), flat or special fee basis at such rates or in such amounts in effect at the time of such services, which may be modified by us in our sole and reasonable discretion from time to time. In addition, all fees and expenses incurred by the trustee or agent, in connection with the trustee's or agent's EAS and ordinary administration services and including without limitation the fees and expenses of legal counsel, financial advisors and other professionals, charges for wire transfers, checks, internal transfers and securities transactions, travel expenses, communication costs, postage (including express mail and overnight delivery charges), copying charges and the like will be payable, at cost, to the trustee or agent. EAS fees are due and payable in addition to annual or ordinary administration fees. Failure to pay for EAS owed to U.S. Bank when due may result in interest being charged on amounts owed to U.S. Bank for extraordinary administration services fees and expenses at the prevailing market rate.

**General.** Your obligation to pay under this Fee Schedule shall govern the matters described herein and shall not be superseded or modified by the terms of the governing documents, and survive any termination of the transaction or governing documents and the resignation or removal of the trustee or agent. This Fee Schedule shall be construed and interpreted in accordance with the laws of the state identified in the governing documents without giving effect to the conflict of laws principles thereof. You agree to the sole and exclusive jurisdiction of the state and federal courts of the state identified in the governing documents over any proceeding relating to or arising regarding the matters described herein. Payment of fees constitutes acceptance of the terms and conditions described herein.

Account approval is subject to review and qualification. Fees are subject to change at our discretion and upon written notice. Fees paid in advance will not be prorated. The fees set forth above and any subsequent modifications thereof are part of your agreement. Finalization of the transaction constitutes agreement to the above fee schedule, including agreement to any subsequent changes upon proper written notice. In the event your transaction is not finalized, any related out-of-pocket expenses will be billed to you directly. Absent your written instructions to sweep or otherwise invest, all sums in your account will remain uninvested and no accrued interest or other compensation will be credited to the account. Payment of fees constitutes acceptance of the terms and conditions set forth.

#### IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT:

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Durham County, NC

by: \_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

\_\_\_\_\_, Developer

by: \_\_\_\_\_  
Authorized signature

\_\_\_\_\_  
Date

Date: 1/27/2020

U.S. Bank Personal

## EXHIBIT B TO MEMORANDUM OF UNDERSTANDING

### STATE OF NORTH CAROLINA

### DURHAM COUNTY

#### FORM OPTION TO LEASE REAL ESTATE – 300 EAST MAIN STREET

This Option to Lease Real Estate (the "Agreement") is effective as of January 21<sup>st</sup>, 2020, by and between Durham County, North Carolina, a political subdivision and body corporate of the State of North Carolina, with an address of Durham County, Office of the County Attorney, 200 East Main Street, 2<sup>nd</sup> Floor, Old Courthouse, Durham, North Carolina 27701, Attn: Lowell L. Siler, Esq., County Attorney ("County") and Laurel Street Residential, a North Carolina limited liability company, with an address of 2132 Thrift Road, Suite A, Charlotte, North Carolina 28208 ("Developer").

#### WITNESS THAT:

**WHEREAS**, County is the fee simple owner of 2.16 acres of land located in Durham, North Carolina, more particularly described on Exhibit A attached hereto (the "Property");

**WHEREAS**, Developer desires to construct a five (5)-story affordable housing structure which shall provide for public open space and shall contain approximately one hundred five (105) affordable housing units over five floors with a variety of studio, one, two and three bedroom units on a portion of the Property (the "Housing Structure Site"); and

**WHEREAS**, in furtherance of the foregoing purposes, Developer desires to hold an option to lease the Housing Structure Site, and County desires to grant to Developer an option to lease the Housing Structure Site, upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of and in reliance on the mutual promises and covenants herein made and the mutual benefits to be derived therefrom, County and Developer agree as follows:

1. **Grant of Option.** County hereby grants, bargains and conveys to Developer, and Developer hereby accepts and acquires from County a sole, exclusive and irrevocable right and option to lease the Housing Structure Site upon the terms and subject to the conditions set forth herein (the "Option").

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 until December 31, 2022, 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.** Developer may exercise the Option at any time during the Option Term by giving written notice (the "Option Notice") to County, signed by Developer, of

Developer's intention to exercise the Option and setting forth the time and date of the closing of the lease transaction contemplated herein (the "Closing").

4. **Terms of Option.** At the Closing, Developer and County shall execute a ground lease agreement for the Housing Structure Site 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 a leasehold interest in the Housing Structure Site for a term of ninety-nine (99) years or such term as maybe required by an investor member.

(b) **Annual Rental.** The annual rental to be paid by Developer for the Ground Lease shall be One Hundred and 00/100 Dollars (\$100.00);

(c) **Title.** The leasehold interest conveyed to Developer under the Ground Lease shall be good and marketable, free and clear of all liens and encumbrances, except for affordable housing restrictions and minor easements and other title defects which in Developer's reasonable judgment do not or will not materially adversely affect the use or value of the Housing Structure Site (such minor easements, and other title defects accepted by Developer being referred to as the "Permitted Encumbrances") and insurable as such by any title insurance company selected by Developer.

(d) **Other Terms.** Developer and County both agree and understand that the development of the Housing Structure Site is intended to be funded from proceeds of tax-exempt bond financing and investment of equity from the syndication of low-income housing tax credits and/or alternative affordable housing funding sources. Accordingly, it is agreed that the lease shall include all terms, conditions, and provisions as may be required by these funding sources.

5. **Conditions Precedent to Closing.** Upon providing the Option Notice, Developer shall be obligated to complete the transaction and to consummate the Ground Lease only upon the satisfaction of each of the following conditions set forth below:

(a) The representations and warranties of County 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) County shall be able, as of the date of Closing, to convey an insurable leasehold interest in the Housing Structure Site except for Permitted Encumbrances;

(c) Developer shall have applied for any and all licenses, permits or other approvals necessary for the consummation of the transaction contemplated by this Agreement and its proposed construction of the 300 East Main Affordable Housing Units (as defined in the Memorandum of Understanding dated January \_\_, 2020) between the County of Durham and the Developer;



(d) Developer shall have received an allocation of low income housing tax credits from NCHFA or have secured alternate financing as part of a financing and development plan approved by County.

6. Conditions Precedent to Closing by County. County shall be obligated to complete the transaction and to consummate the Ground Lease only upon the satisfaction of each of the following conditions set forth below:

(a) The representations and warranties of Developer contained in this Agreement shall be true and correct in all respects on the date hereof and on the Closing Date as though such representations and warranties were made on each such date;

(b) Developer shall have received an allocation of volume cap and low-income housing tax credits from NCHFA or have secured alternate financing as part of a financing and development plan approved by County.

7. Representations and Warranties. Developer hereby represents, warrants and covenants to and with County, that:

(a) Developer is and on the date of Closing shall be duly organized and validly existing under the laws of the State of North Carolina; and

(b) Developer has 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 Developer have the right, power, legal capacity and authority to execute, deliver and perform this Agreement.

8. Representations and Warranties. County hereby represents, warrants and covenants to and with Developer that:

(a) County owns the Housing Structure Site 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 County's right to enter into this Agreement and fulfill its obligations hereunder or which would prevent possession by Developer of all or any part of the Housing Structure Site, subject only to encumbrances as are disclosed in the title insurance commitment to be obtained by Developer;

(b) From and after the date hereof during the Term, County shall not offer to sell the Housing Structure Site to any third party, entertain any offers to purchase the Housing Structure Site from any third party, or sell, convey, burden or encumber the Housing Structure Site in any manner whatsoever (whether by mortgage, lien, easement, restriction or otherwise), except as otherwise provided herein; and

(c) 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 County in accordance with their respective terms and conditions and upon payment in full of the Option Price will effectively vest in Developer an exclusive option to lease the Property.

9. **Termination of Option.** This Agreement shall become null and void and the Option herein granted shall lapse without further notice upon the occurrence of any one of the following events:

- (a) Developer's written notice that it does not intend to exercise the Option.
- (b) The execution of a Ground Lease by and between County and Developer, if said Ground Lease is entered into before the end of the Option Term.
- (c) The expiration of the Option Term and Developer's failure to exercise the Option in the manner herein provided.
- (d) Developer's failure on the date of Closing to be allocated bond volume cap and an allocation of 4% of low income housing tax credits by the NCHFA by 2022 or to secure alternative financing as part of a financing and development plan approved by County.
- (e) Developer's failure on the date of Closing to be duly organized and validly existing under the laws of the State of North Carolina.
- (f) During the term of the Option Term, Developer has filed articles of dissolution with N.C. Secretary of State, has filed bankruptcy or a receiver has been appointed for its business.

10. **Closing.** Closing shall occur within one hundred eighty (180) days 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.

11. **Condition of Housing Structure Site.** Possession of the Housing Structure Site shall be delivered at Closing to Developer "As Is" at the time of Closing.

12. **Right of Entry and Use of Housing Structure Site.** At any reasonable time prior to the expiration of this Agreement, at Developer's sole cost, Developer and its agents, employees, contractors and representatives, shall have the right to enter on the Housing Structure Site for the purpose of inspecting the condition of the Housing Structure Site and making such investigations and tests as are reasonable, including, but not limited to, surveys, environmental and geotechnical reports. Developer 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 Housing Structure Site. Developer hereby indemnifies and holds County harmless from and against damages (including reasonable attorney fees) arising out of the activities of Developer and Developer's agents, employees, contractors and representatives, on or with respect to the Housing Structure Site. Developer shall be entitled to re-inspect the Housing Structure Site within thirty (30) days immediately preceding Closing to assure that the Housing Structure Site continues to be in the condition warranted herein and complies with Developer's requirements. Developer shall give County reasonable notice of any entrance. All inspection and testing will be conducted in compliance with applicable law.

13. **Brokers.** Each party shall indemnify and hold the other party harmless from and against any and all commissions, fees, costs or expenses incurred by or due to any real estate broker alleged to be engaged by either party or by reason of the execution of this Agreement or the Ground Lease.

14. **Assignment.** Neither party has the right to assign its interest in this Agreement without the prior written consent of the other party hereto.

15. **Cooperation.** County shall fully cooperate with Developer in gathering and furnishing any material information reasonably requested by Developer in connection with its efforts to have the Housing Structure Site approved for the purposes herein intended.

16. **Miscellaneous.**

(a) **Modifications.** No modification of this Agreement shall be effective unless set forth in writing and signed by both Developer and County.

(b) **Further Assurances.** Each party shall execute such other and further 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 counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

(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. Any litigation regarding this Agreement or the Housing Structure Site shall be brought in the courts located in the County of Durham, North Carolina.

(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. Any notice, request, demand, approval, or other communication given hereunder or in connection herewith ("Notice") shall be in writing and shall be personally delivered, or sent by courier, or sent by express, registered, or certified mail, return receipt requested, postage and fees prepaid, or by a nationally recognized overnight delivery service, and addressed to the party to receive the Notice, at the following addresses:

If to Developer, to:	Laurel Street Residential, LLC 2132 Thrift Road, Suite A Charlotte, NC 28208 Attention: Dionne Nelson President and CEO
With a copy to:	The Banks Law Firm, P.A. P.O. Box 14350 Research Triangle Park, NC 27709 Attention: Sherrod Banks, Esq.
If to County, to:	Durham County Office of the County Attorney 200 East Main Street 2 <sup>nd</sup> Floor, Old Courthouse Durham, NC 27701 Attn: Lowell L. Siler, Esq., County Attorney
With a copy to:	Parker Poe Adams & Bernstein LLP 401 South Tryon Street, Suite 3000 Charlotte, NC 28202 Attention: Anthony Fox, Esq.

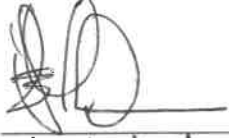
Any party, by a Notice so given, may change its address for any subsequent Notice. Any Notice shall be deemed given when delivered or sent by courier; or if sent by overnight mail, the next business day; or if sent by mail two (2) business days after, deposit in the United States mail.

(l) No Third Party Beneficiaries. Nothing contained herein or in any other agreement or instrument executed in conjunction therewith, shall be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnerships, joint venture or any association or relationship between the parties, except as provided in the SOG Agreement.

[Signature Page Follows]

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

COUNTY OF DURHAM, NORTH CAROLINA  
(SEAL)

By:   
Name: Wendell M. Dain  
Title: County Manager

LAUREL STREET RESIDENTIAL, LLC.  
a North Carolina limited liability company (SEAL)

By:   
Name: Dionne Nelson  
Title: President and CEO

STATE OF NORTH CAROLINA

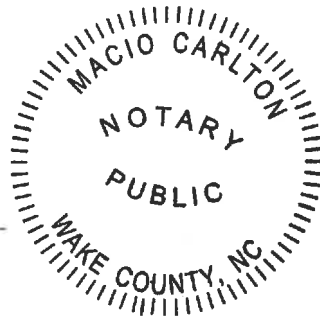
COUNTY OF DURHAM

This 6<sup>th</sup> day of April, 2020, personally came before me Wendell M. Davis who, being by me duly sworn, says that he/she is the County Manager of the County of Durham, North Carolina, that the foregoing instrument was signed by him/her, on behalf of such entity, by its authority duly given.

My commission expires:

3/25/2025

[NOTARIAL SEAL]



[Signature]  
Notary Public

STATE OF NORTH CAROLINA

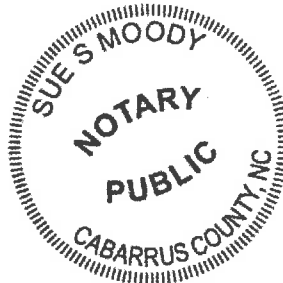
COUNTY OF MECKENBURG

This 22nd day of January, 2020, personally came before me Diorme Nelson who, being by me duly sworn, says that he/she is the President and CEO of Laurel Street Residential, LLC, a North Carolina limited liability company, that the foregoing instrument was signed by him/her, on behalf of such entity, by its authority duly given.

My commission expires:

3/26/2022

[NOTARIAL SEAL]



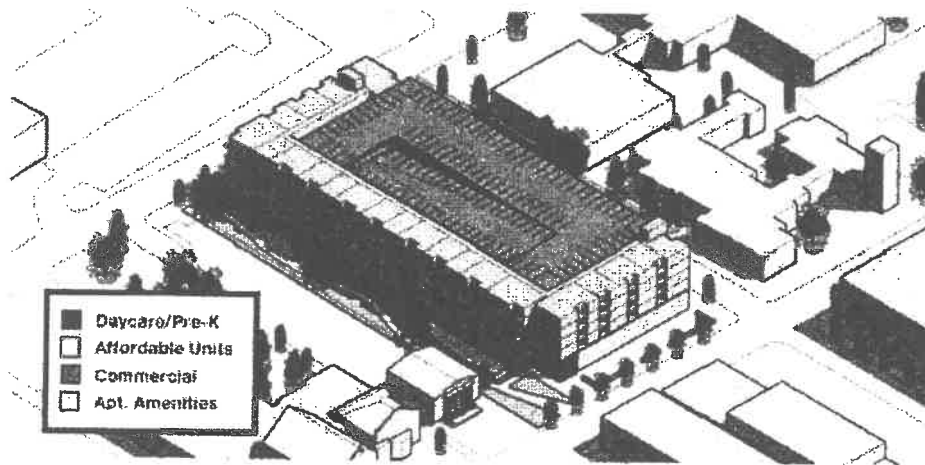
[Signature]  
Notary Public

**Exhibit A**

[LEGAL DESCRIPTION TO BE INSERTED]

## Appendix A

### **Appendix A to Memorandum of Understanding for 300 East Main Street – Affordable Housing Project**



Proposed "Housing Structure" is particularly identified as "Affordable Units".

