

## **AGREEMENT FOR OPTION TO LEASE REAL ESTATE**

This Agreement for an Option to Lease Real Estate (this “Agreement”) is entered into this \_\_\_\_\_ day of February, 2022 between the City of Flagstaff, a political subdivision of the State of Arizona (the “Optionor”), and Housing Solutions of Northern Arizona, a non-profit organization (the “Optionee”). Optionor and Optionee may be referred to individually in this Agreement as a Party or jointly as the Parties.

### **RECITALS**

A. Optionor owns real estate located at 1700 East Sixth Avenue in Flagstaff, AZ, as more specifically described in Exhibit A, that has been set aside by Optionor for the development of affordable housing (the “Property”).

B. Optionor intends to develop, or work with a partner organization to develop, affordable housing on the Property to further address the housing emergency in Flagstaff, as declared by the Flagstaff City Council on December 1, 2020, through the Council’s adoption of Resolution No. 2020-66.

C. The new housing units will provide needed safe, decent, and affordable housing opportunities for all residents of the City of Flagstaff.

D. In 2018, Optionor worked with a private developer on a plan to develop affordable housing on multiple properties owned by Optionor, including the Property.

E. Despite the best efforts of Optionor and developer, the multi-site development project never came to fruition; however, construction plans for an eleven-unit affordable housing development on the Property were completed by the prior developer.

F. Optionee is a Flagstaff non-profit housing organization whose mission is to build opportunities for sustainable, affordable housing in northern Arizona.

G. Optionee has obtained the plans that were previously drafted for the Property and is currently in the process of applying for funding opportunities to construct the development (the “Project”).

H. If Optionee is able to obtain funding to construct the Project, Optionor is willing to enter into a long-term ground lease with Optionee that will allow Optionee to construct the Project on the Property and manage the affordable units.

I. In order to meet the prerequisites for certain funding opportunities, Optionee must demonstrate that it has sufficient site control over the land on which the proposed project will be constructed.

J. Optionor and Optionee wish to enter into this Agreement to memorialize their mutual intention to enter into a long-term lease of the Property if Optionee obtains adequate funding to construct the Project.

## AGREEMENT

In consideration of the promises and mutual covenants set forth herein, the Parties hereto, with the intent to be legally bound hereby, agree as follows:

1. Option to Lease Property. During the Term (as defined in Paragraph 3 below), Optionee shall have the exclusive right and option (the “Option”) to lease the Property from the Optionor, upon the terms and conditions set forth herein. The Option shall be exercisable by written notice from Optionee to Optionor at any time before the termination of this Agreement. In the event that Optionee exercises the Option, Optionor and Optionee shall execute and deliver a lease in a form to be agreed upon by Optionor and Optionee (the “Lease”).

2. Option Price. Optionee shall pay to Optionor the sum of Thirty (\$30.00) Dollars each year that this Agreement is in place.

3. Term. This Agreement shall commence as of the date written above and terminate on June 1, 2023, unless sooner terminated as provided herein (the “Term”). Optionee may request two one-year extensions of this Agreement. Upon termination of this Agreement as provided herein, neither party shall have any further rights or obligations hereunder.

4. Title. At the Closing (as defined in Paragraph 9 below), Optionor shall furnish to Optionee evidence of good, marketable, and insurable title to the Property.

5. Lease. If Optionee exercises the Option, then Optionor and Optionee shall enter into the Lease in a form mutually agreed upon by the Parties. The Lease shall convey a leasehold interest in the Property to Optionee for a term not less than 99 years. Unless otherwise agreed at the time of execution of the Lease, base rent shall be \$100 per year. Such Lease shall include those terms, conditions, covenants and other provisions that are usual and customary and normally required by prudent parties engaged in similar transactions. Upon executing the Lease, Optionor may be required to execute a Declaration of Affirmative Land Use and Restrictive Covenants Agreement (a “LURA”) in relation to the Property. If the Parties do not consummate an acceptable Lease within 120 days after Optionee exercises its Option, then this Agreement shall terminate. The 120-day Lease negotiation period may be extended by the mutual written consent of the Parties.

6. Conditions Precedent to Performance by the Optionee. Optionee shall be obligated to complete the transaction and to consummate the Lease of the Property only upon the satisfaction of each of the following conditions set forth below or the waiver thereof by the Optionee:

- a. Optionor is duly authorized to consummate the Lease;
- b. Optionor shall be able to convey good, marketable, and insurable leasehold interest in the Property; and
- c. Optionee shall have all required approvals from its funding provider, lender(s), and any investor(s) as to the form of Lease and the Project.

7. Conditions Precedent to Performance by the Optionor. Optionor shall be obligated to complete the transaction and to consummate the Lease of the Property only upon the satisfaction of each of the following conditions set forth below or the waiver thereof by Optionor:

- a. The representations and warranties of Optionee contained in this Agreement shall be true and correct in all respects on the date hereof and on the date of Closing as though such representations and warranties were made on each such date;
- b. Optionee shall have obtained any and all government, funding provider, investor and lender approvals, licenses, permits and other approvals necessary for the consummation of the transaction contemplated by this Agreement;
- c. Optionee shall have received the necessary funding for the Project; and
- d. If necessary, Optionor shall have received on or before the date of Closing, HUD's approval of the disposition of the Property and the form of the Lease.

8. Representations and Warranties of the Optionee and Optionor. The Optionee hereby represents, warrants, and covenants to the Optionor that:

- a. The Optionee is duly organized, validly existing, and in good standing under the laws of the State of Arizona; and
- b. The Optionee has the right, power, legal capacity and authority to execute, deliver and perform this Agreement.

The Optionor hereby represents, warrants and covenants to the Optionee that:

- a. the Optionor has the right, power, legal capacity and authority to execute, deliver and perform this Agreement.

9. Closing. The closing shall occur within 120 days after the date of written notice from the Optionee to the Optionor of the Optionee's exercise of the Option (the "Closing"), unless the parties are unable to consummate an acceptable Lease, in which case this Agreement will

terminate pursuant to Paragraph 5. The Closing date may be extended by the mutual written consent of the parties. At the 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. Event of Default. The failure of the other party to perform any of its duties and obligations set forth in this Agreement shall constitute an event of default.

11. Remedies. Upon the occurrence and during the continuation of an event of default, the non-defaulting party may, at its option, elect to enforce the terms of this Agreement, including specific performance, or demand and be entitled to, full termination of this Agreement.

12. Notices. All notices, requests, demands, approvals, or other formal communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed received three days after being sent by registered or certified mail, return receipt requested, postage prepaid; or one day after being sent by a nationally recognized, receipted overnight delivery service, addressed as follows:

If to Optionee:

Housing Solutions of  
of Northern Arizona  
2304 N. 3rd Street  
Flagstaff, AZ 86004  
Attn: President

If to Optionor:

Flagstaff Housing Authority  
3481 North Fanning Drive  
Flagstaff, AZ 86004  
Attn: Housing Director

With copies to:

City of Flagstaff  
211 West Aspen Avenue  
Flagstaff, AZ 86001  
Attn: City Attorney  
Attn: City Clerk

13. No Third Party Beneficiaries. Nothing contained in this Agreement, nor any act of Optionor or Optionee, shall be deemed or construed to create any relationship of third party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving Optionor and Optionee.

14. Cancellation for Conflict of Interest. This Agreement may be terminated pursuant to the provisions of A.R.S. 38-511.

15. Assignment. Optionee may not assign, pledge or otherwise transfer its interest in this Agreement without the prior written consent of Optionor.

16. Modifications. No modification of this Agreement shall be effective unless set forth in writing and signed by both Parties.

17. 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.

18. 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.

19. Entire Agreement. This Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

20. Paragraph Heading. 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.

21. Exhibits. All exhibits attached to this Agreement are incorporated herein by this reference.

22. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

23. 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 Arizona. Any litigation regarding this Agreement or the Property shall be brought in the state courts located in Coconino County, Arizona.

24. Severability. If any portion of the 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.

25. Certification Regarding Debarment, Etc. By executing this Agreement, Optionee certifies to the Optionor, and in addition agrees that in any proposal submitted to Optionor in connection with this Agreement Optionee shall further certify to the Optionor, that neither Optionee nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the transaction evidenced by this Agreement by any federal department or agency and further agrees to comply with the requirements of 2 C.F.R. Part 2424.

26. Other Laws, Rules Regulations and Directives. Optionee, and any of its subcontractors, shall comply with all other applicable federal, state or local laws, rules, regulations, orders and directives.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have executed this Agreement as of the date first set forth above.

**CITY OF FLAGSTAFF, ARIZONA**

\_\_\_\_\_  
Greg Clifton, City Manager

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sterling Solomon, City Attorney

**HOUSING SOLUTIONS  
OF NORTHERN ARIZONA**

\_\_\_\_\_  
President

\_\_\_\_\_  
Date

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY