

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this "**Agreement**") is entered into as of this ____ day of _____ 201____, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**City**"), acting by and through the Mayor's Office of Housing and Community Development ("MOHCD"), and 735 DAVIS SENIOR LP, a California Limited Partnership, and its permitted successors and assigns hereunder (the "**Optionee**"), with reference to the following facts:

RECITALS

A. The City is the fee owner of that certain real property and the improvements thereon, located at 735 Davis Street, San Francisco and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Optionee desires to develop the Property with approximately 53 units (consisting of studios, 1-BRs, and one 2-BR unit) for low income seniors and formerly homeless seniors with ground floor community serving uses (the "**Project**"). In order to develop the Project, Optionee desires to enter into a ground lease with the City in which the City will lease to Optionee the Property subject to certain conditions as provided herein.

C. Optionee intends to develop the Project with 4% Low Income Housing Tax Credits and other sources.

D. In order to apply for Project financing, Optionee desires to obtain from the City, and the City desires to grant to Optionee, upon the specific terms and conditions set forth in this Agreement, the exclusive right and option to lease the Property.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE CITY AND OPTIONEE (EACH A "PARTY", AND, COLLECTIVELY THE "PARTIES") AGREE AS FOLLOWS:

AGREEMENT

Section 1. Grant of Option. The City grants to Optionee the option to lease the Property and construct the Project for the consideration and under the terms and conditions set forth in a ground lease (the "**Option**"). The ground lease shall be substantially in the form and substance of the form of ground lease attached hereto as Exhibit B ("Form Ground Lease" or, when referring to a final effective ground lease, "Ground Lease").

Section 2. Term of Option: Exercise.

a. Term and Extension of Term. The term of the Option (the "**Term**") shall be for a period commencing on the date of this Agreement and ending June 30, 2019, (the "**Initial Term**") unless extended. So long as the Optionee is not then in default, Optionee may request an extension of the Term for an additional twelve (12) months (the "**Extended Term**") by giving written notice to the City between the date that is thirty (30) days prior to the expiration of the Initial Term and at any time before the expiration of the Initial Term. The Extended Term shall commence on 12:01 A.M. on the day immediately following

the expiration of the Initial Term and shall end on June 30, 2020. All references in this Agreement to the Term shall mean the Initial Term, and if extended as set forth above, the Extended Term. During the Term, Optionee and City staff agree to cooperate and negotiate in good faith to complete all predevelopment activities to commence construction of the Project. The Term shall end on the date set forth above or, if earlier, on the effective date of the Ground Lease.

b. Exercise of Option. Before Optionee's exercise of the Option, (1) the final form of the Ground Lease must be agreed to by Optionee, the City's Director of Property, and the MOHCD Director or her/his designee, in writing and shall be materially consistent with the Form Ground Lease, and (2) Optionee's financing of the Project must be approved by MOHCD. At any time following approval of the Ground Lease by the City's Director of Property and the MOHCD Director, approval of Optionee's financing for the Project, and before the expiration of the Term, and so long as the Optionee is not then in default under this agreement or any other agreements with the City, Optionee may exercise the Option by giving written notice to the City (the "**Option Notice**").

c. Expiration. The Option shall expire at midnight on the last day of the Term. If the expiration of the Term falls on a Saturday, Sunday or legal holiday in the State of California, then the Option may be exercised on the next following business day. Upon termination of the Option and a written request by the City, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the City to evidence the termination of the Option.

d. CEQA. In addition, the Parties acknowledge and agree that as a condition precedent to Optionee's right to exercise the Option, all applicable environmental review must be completed, including but not limited to review under the California Environmental Quality Act (CEQA). Notwithstanding anything to the contrary in this Agreement, no Party is in any way limiting its discretion or the discretion of any department, board or commission with jurisdiction over the Property, including but not limited to a party hereto, from exercising any discretion available to such department, board or commission with respect thereto, including but not limited to the discretion to (i) make such modifications deemed necessary to mitigate significant environmental impacts, (ii) select other feasible alternatives to avoid such impacts, including the "No Project" alternative; (iii) balance the benefits against unavoidable significant impacts prior to taking final action if such significant impacts cannot otherwise be avoided, or (iv) determine not to proceed with the proposed Ground Lease for the Property.

Section 3. Option Consideration. The Option is granted in consideration of Optionee's obligation to negotiate in good faith for the Ground Lease and for advancement of the Project. The Option consideration is related to the Option only and in no way relates to Ground Lease payments that will be owed to MOHCD. In addition, concurrently with the execution of this Agreement, Optionee shall pay and deliver to City the sum of One Hundred Dollars (**\$100.00**) as separate and independent consideration ("**Independent Consideration**") for City's execution of this Agreement and agreement to grant the Option on and subject to the terms and conditions of this Agreement. The Independent Consideration is non-refundable to Optionee in the event this Agreement terminates prior to Optionee's exercise of the Option.

Section 4. Closing.

a. Expenses. All expenses, fees or costs (except attorneys' fees and costs) incurred in connection with the Ground Lease of the Property, including but not limited to city and county documentary transfer tax, conveyance taxes, recording charges (if any), and costs of title insurance shall be borne by the Optionee. Each party shall bear its own attorneys' fees and costs incurred in connection with negotiation and execution of this Agreement and the Ground Lease.

b. Proration of Taxes. Real property taxes on the Property shall be prorated as of the date of closing of the Ground Lease.

c. Title Insurance. The closing of the Ground Lease shall be conditioned on the issuance to the tenant of an ALTA leasehold policy of title insurance, from a title company chosen by the tenant, insuring the tenant's leasehold interest in the Property subject only to reasonable exceptions approved by the tenant.

Section 5. Notices. All notices or other communications made pursuant to this Agreement shall be in writing and shall be deemed properly delivered, given or served to the parties at the following addresses when (i) mailed by certified mail, postage prepaid, return receipt requested; (ii) sent by express delivery service, charges prepaid with a delivery receipt; or (iii) personally delivered when a delivery receipt is obtained:

City: City and County of San Francisco Mayor's Office of Housing and
Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Director

with a copy to: Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

Optionee: 735 Davis Senior LP
c/o BRIDGE Housing
600 California Street, Suite 900
San Francisco, CA 94108
Attn: General Counsel

with a copy to: JSCo 735 Davis Senior LLC
c/o John Stewart Company
1388 Sutter Street, 11th Floor
San Francisco, CA 94109
Attn: Jack Gardner

All notices so delivered, mailed or sent shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused or the date the notice was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this Section 6. Any notice required under this Agreement that is sent by a Party shall be sent to, or contemporaneously copied to, all of the other Parties.

Section 6. Assignment of Option. Without the prior written consent of the City, Optionee may assign its rights and obligations under this Agreement to any limited liability company in which BRIDGE Housing Corporation and John Stewart Company, or their respective corporate affiliates, are managing members, or a limited partnership in which BRIDGE Housing Corporation and John Stewart Company, or their respective corporate affiliates, are general partners. Optionee shall provide written notice and a copy of an assignment agreement executed by Optionee and its permitted assignee within five (5) business days after such assignment of this Agreement. All other transfers by Optionee shall require the prior written consent of the City.

Section 7. Binding Effect. This Agreement and its terms and conditions shall bind upon and inure to the benefit of the parties to this Agreement and their respective successors and permitted assigns. By approving this Agreement, the City's Board of Supervisors approves the Form Ground Lease with the substantive terms described in Section 4 without the need for additional action by the Board of Supervisors; provided, if there are any material changes that are to the material detriment of the City, as determined by the MOHCD Director, then such changes will be subject to Board of Supervisors approval before the Ground Lease becomes effective.

Section 8. Time. Time is of the essence of this Agreement.

Section 9. Further Documents. Upon the reasonable request of the other Party, each Party will execute, acknowledge and deliver or cause to be executed, acknowledged and delivered, such further instruments and documents as may be reasonably necessary in order to carry out the intent and purpose of this Agreement, including escrow instructions.

Section 10. Commission. Each Party to this Agreement represents to the other Party that it has not engaged or used the services of any person, firm or corporation that may claim a broker's commission or finder's fee upon execution of this Agreement or the Ground Lease, and each Party to this Agreement agrees to hold the other Party harmless from any loss, damage, expense or liability, including attorney's fees, resulting from any claim by any person, firm or corporation based upon its having acted as broker or finder on behalf of said indemnifying Party.

Section 11. Captions. The captions of the paragraphs of this Agreement are for convenience and reference only, and the words contained in the captions shall in no way be held to explain, modify, amplify or aid in the interpretations, constructions or meaning of the provisions of this Agreement.

Section 12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same Agreement.

Section 13. Entire Agreement; Signatures. This Agreement contains the entire agreement between the Parties respecting the matters set forth, and supersedes all prior agreements between the Parties respecting the matters set forth.

Section 14. Attorneys' Fees. In any action between Optionee and the City to enforce or interpret any of the terms of this Agreement, the prevailing Party shall be entitled to recover costs of suit and expenses including, without limitation, reasonable attorneys' fees.

Section 15. Sunshine Ordinance. Optionee understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (Gov. Code Section 6250 et seq.), this Agreement and any and all records, information, and materials submitted to City hereunder are public records subject to public disclosure. Optionee hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

Section 16. Prohibition Against Making Contributions to City. Through its execution of this Agreement, Optionee acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require the approval by a City elective officer, the board on which that City elective officer serves, or a board on which an appointee of that individual serves, from making any campaign contribution to (1) the City elective officer, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Optionee acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

Section 17. Conflicts of Interest. Through its execution of this Agreement, Optionee acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Optionee becomes aware of any such fact during the term of this Agreement, Optionee shall immediately notify the City.

Section 18. Effective Date. Notwithstanding anything to the contrary contained herein, this Agreement shall not be effective until the date on which the City's Board of Supervisors and Mayor enact a resolution approving and authorizing this Agreement and the transactions contemplated hereby, following execution of this Agreement by both Parties.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OPTIONEE ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT

UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT, IN THEIR RESPECTIVE SOLE DISCRETION.

[Signatures appear on following page]

IN WITNESS WHEREOF, Optionee and the City have executed this Agreement as of the date first written above.

CITY:

OPTIONEE: 735 Davis Senior LP, a California limited partnership

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

735 DAVIS SENIOR LP, a California limited partnership

By: _____
Andrico Penick
Acting Director of Property

By: 735 Davis Senior BRIDGE LLC, a California limited liability company, its managing general partner

By: _____
Kate Hartley
Director, Mayor's Office of Housing and Community Development

By: MCB Family Housing, Inc., a California nonprofit public benefit corporation, its sole member and manager

By: _____
Name:

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

Title:

By: _____
Deputy City Attorney

By: JSCo 735 Davis Senior LLC, a California limited liability company, its administrative general partner

By: The John Stewart Company, a California corporation, its sole member and manager

By: _____

Jack D. Gardner, President

EXHIBIT A

Property Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A portion of that parcel of land (State Parcel No. 12929) conveyed to the State of California by instrument recorded February 16, 1955, in Volume 6549, Page 526, Official Records of the City and County of San Francisco and being more particularly described as follows:

Commencing at the point of intersection of the Northerly line of Broadway and the Westerly line of Davis Street; running thence Westerly and along said line of Broadway 137 feet and 6 inches; thence at a right angle Northerly 137 feet and 6 inches; thence at a right angle Easterly 137 feet and 6 inches to the Westerly line of Davis Street; thence at a right angle Southerly along said line of Davis Street 137 feet and 6 inches to the point of commencement.

Being part of 50 Vara Block "J".

Excepting Therefrom all that parcel of land conveyed by Deed recorded November 30, 1959; in Volume A-60, Page 345, Official Records of the City and County of San Francisco, and described therein as follows:

Commencing at a point on the Easterly line of the parcel of land described in Deed No. 12929 to the State of California, recorded February 16, 1955, in Volume 6549, Page 526, Official Records of the City and County of San Francisco, distant along said Easterly line South $9^{\circ} 05' 19''$ East 78.58 feet from the Northeasterly corner of said parcel, said Easterly line also being the Westerly line of Davis Street; thence from a tangent that bears South $82^{\circ} 02' 25''$ West, along a curve to the left with a radius of 408.00 feet, through an angle of $1^{\circ} 07' 44''$, an arc length of 8.04 feet; thence South $80^{\circ} 54' 41''$ West, 129.53 feet to the Westerly line of said parcel; thence along last said line South $9^{\circ} 05' 19''$ East, 59.00 feet to the Northerly line of Broadway Street; thence along last line West $80^{\circ} 54' 43''$ East 137.57 feet to the Easterly line; thence along last said line $9^{\circ} 05' 19''$ West, 58.92 feet to the point of commencement.

APN: Block 0140, Lot 008