

AMENDED AND RESTATED DEVELOPER FEE AGREEMENT
(600 7th Street)

THIS AMENDED AND RESTATED DEVELOPER FEE AGREEMENT ("Agreement") is dated for reference purposes only as of _____, 2022, by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (the "City"), and **MERCY HOUSING CALIFORNIA**, a California nonprofit public benefit corporation (the "Developer").

RECITALS

A. Mercy Housing California 97, L.P., a California Limited Partnership ("Borrower"), has acquired or is about to acquire a leasehold interest in real property located at 600 7th Street, San Francisco (the "Land"), on which Borrower intends to construct 221 units of low-income housing, including one (1) manager's unit and including the construction of a 4,223 square foot commercial warm shell (the "Project").

B. The City is providing financing for the predevelopment costs, a portion of the construction costs, and permanent financing of the Project, including financing to cover construction cost overruns and related soft costs (the "Loan"). The City's financing is or will be evidenced by, among other documents, a Loan Agreement dated as of the date of this Agreement (the "Loan Agreement"). Definitions and rules of interpretation set forth in the Loan Agreement apply to this Agreement.

C. Under a prior developer fee agreement dated March 27, 2020 between the City and Developer, the City previously committed \$550,000 to Developer to perform services related to predevelopment activities for the Project.

D. Under an agreement with Borrower, Developer will perform services for the development of the Project, for which Developer will receive developer fees for the Project in the allowed amounts set forth in MOHCD's Developer Fee Policy dated October 16, 2020, as it may be amended from time to time and incorporated herein by this reference ("Developer Fee Policy").

E. As a condition to the City's financing for the Project, Developer has agreed with the City to restrict the use of developer fees in accordance with this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the City's agreement to provide financing for the Project, the parties agree as follows:

1. Definitions. Capitalized terms not defined in this Agreement will have the same meanings as set forth in the Loan Agreement.

2. Amount and Payment Schedule.

(a) Developer will be entitled to receive a maximum of [Four Million Thirty Five Thousand] and no/100 Dollars (\$[4,035,000]) (the “Developer Fees”) for the services it shall render for the development and completion of the Project, subject to the terms and conditions of this Agreement and the Developer Fee Policy.

(b) Developer will receive payment of the Developer Fee as specified below:

Total Developer Fee:	\$[4,035,000]	
Project Management Fee Paid to Date:	\$550,000	
Amount of Remaining Project Management Fee:	\$550,000	
Amount of Fee at Risk (the "At Risk Fee"):	\$2,310,000	
Amount of Commercial Space Developer Fee (the “Commercial Fee”):	\$125,000	
Amount of General Partner Equity Contribution (the “GP Equity”):	\$[500,000]	
Milestones for Disbursement of that portion of Developer Fee remaining and payable for Project Management	Amount Paid at Milestone	Percentage Project Management Fee
Construction close	\$220,000	20%
50% Construction Completion	\$110,000	10%
100% Construction Completion	\$110,000	10%
Project close-out	\$110,000	10%
Milestones for Disbursement of that portion of Developer Fee defined as At Risk Fee		Percentage At Risk Fee
100% lease up and draft cost certification	\$462,000	20%
Permanent conversion	\$1,155,000	50%
Project close-out	\$693,000	30%
Milestones for Disbursement of that portion of Developer Fee defined as Commercial Fee		Percentage Commercial Fee
Executed LOIs will all commercial tenants	\$62,500	50%
100% occupancy of commercial space	\$62,500	50%

(c) Two Million Three Hundred Ten Thousand and no/100 dollars (\$2,310,000) of the Developer Fee (the “At-Risk Fee”) will be available to cover any development costs that exceed the Project’s budget (“Cost Overruns”), including any contingency, that have been approved by the City. Developer will receive the amount of the At-Risk Fee after payment of such Cost Overruns.

3. Eligible Uses of Developer Fee. Developer agrees to limit the use of Developer Fee to pay only for activities related to affordable housing as follows:

(a) Developer's organizational capacity building and maintenance programs; working capital; housing development production and related programs; physical improvements to existing housing owned or sponsored by Developer; increasing housing operations and asset management activities; improving tenant improvements or commercial space in existing housing owned or sponsored by Developer; funding community facilities associated with existing housing owned or sponsored by Developer providing supplemental tenant rental assistance for existing housing owned or sponsored by Developer; or programs supporting the welfare of residents residing in existing housing owned or sponsored by Developer; and

(b) predevelopment, preconstruction and construction costs, including reasonable administrative expenses, of future affordable housing development sponsored by Developer in San Francisco.

4. Disallowed Developer Fees. Developer will pay to the City or, with the City's prior written consent, use for the Project the amount equal to the portion of the Developer Fee, if any, used in violation of this Agreement within three (3) years of the date of final disbursement.

5. Reporting Requirement. Upon written request from the City, Developer will provide the City with an annual report no later than 120 days after the end of Developer's fiscal year providing specific detail as to the use of any portion of the Developer Fees that was paid during the reporting period.

6. Term. This Agreement will terminate after the City has approved Developer's accounting of its use of Developer Fees.

7. Public Disclosure.

(a) Developer understands and agrees that under the City's Sunshine Ordinance (S.F. Admin. Code, Chapter 67) and the State Public Records Law (Cal. Gov. Code §§ 6250 *et seq.*), this Agreement and any and all records, information and materials submitted to the City hereunder are public records subject to public disclosure. Developer hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Agreement. Further, Developer specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Developer's performance under this Agreement as a passive meeting.

(b) By executing this Agreement, Developer agrees to comply with the provisions of Chapter 12L of the San Francisco Administrative Code. Developer agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the San Francisco Administrative Code. Developer further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section

12L.6 of the Administrative Code. Developer acknowledges that its failure to comply with any of the provisions of this Section will constitute an event of default under this Agreement.

8. Amendment. This Agreement may not be amended except by an instrument in writing signed by the parties.

9. Controlling Document. In the event of any inconsistency between this Agreement and the terms of any financing from the City with respect to the Project, this Agreement will control.

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

"DEVELOPER"

MERCY HOUSING CALIFORNIA,
a California nonprofit public benefit
corporation

By: _____
Name: _____
Title: _____

"CITY"

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation,
represented by the Mayor, acting by and
through the Mayor's Office of Housing and
Community Development

By: _____
Eric D. Shaw, Director
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____
Deputy City Attorney