

OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

THIS OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT (this “Agreement”) is entered into as of _____, 2025 by and between Mercy Housing California 108, L.P., a California limited partnership (“Owner”), and 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 (“City”).

RECITALS

A. Owner has a fee interest in certain land and improvements located thereon which consist of 145 residential apartment units (plus one (1) manager’s unit) located in San Francisco, California, which is more particularly described in **Exhibit A** attached to this Agreement and incorporated herein by this reference (together, the “Project”).

B. The City has agreed to make loan to Owner in the amount of \$[41,297,211] (“Loan”) to provide permanent financing related to the Project, pursuant to that certain Loan Agreement executed by Owner and the City dated _____, 2025 (the “Loan Agreement”). In connection with the Loan Agreement, Owner is also executing a promissory note, which will be secured by a deed of trust recorded concurrently herewith. In addition, Owner is executing a declaration of restrictions that will impose certain affordability restrictions on the Project (the “Declaration”), recorded concurrently herewith.

C. In connection with Owner’s acquisition and development of the Project, and in consideration for City’s financial participation in such development, Owner has agreed to grant City an option and right of first refusal to purchase the Project in certain limited circumstances.

D. The parties now desire to set forth the terms of the option and right of first refusal granted by Owner to City.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the parties hereto and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1

Grant of Option and Refusal Right

Owner grants to City an option (the “Option”) to purchase the Project and all cash accounts of the Partnership and a right of first refusal (the “Refusal Right”) to purchase the Project on the terms and conditions set forth in this Agreement.

ARTICLE 2

Term

2.1 **Option Term**. Subject to the terms and conditions precedent set forth in Section 3.1 below, the term of the Option shall commence on the first day following the expiration of the

15-year tax credit compliance period for the Project determined pursuant to Section 42(i)(1) of the Internal Revenue Code of 1986, as amended, and shall expire upon termination of the Declaration (the “Option Term”).

2.2 Refusal Right Term. Subject to the terms and conditions precedent set forth in Section 3.2 below, the term of the Refusal Right shall commence on the first day following the expiration of the 15-year tax credit compliance period for the Project determined pursuant to Section 42(i)(1) of the Internal Revenue Code of 1986, as amended, and shall expire one hundred eighty (180) days after notice of a third party offer pursuant to Section 3.2 below (the “ROFR Term”).

ARTICLE 3 Manner of Exercising Option and Refusal Right

3.1 Option Exercise. As a condition precedent to City’s Option rights, City may only exercise the Option if, during the Option Term, Owner fails to continue to comply with the affordability restrictions set forth in the Declaration. In the event Owner fails to continue to comply with such affordability restrictions during the Option Term, City shall provide written notice to Owner of such failure, and Owner shall have sixty (60) days to cure the failure, or, if such failure cannot be cured within such sixty (60) day period, such longer period as is reasonably necessary to cure such default, provided that such cure has been commenced within such sixty (60) day period and is being prosecuted diligently to completion. In the event Owner fails to cure within such time period, City may exercise the Option by delivering to Owner written notice of the exercise (the “Exercise Notice”).

3.2 Refusal Right Exercise.

(a) Upon receipt of an offer to purchase the Project during the ROFR Term, Owner shall notify City of such offer and deliver to City a copy thereof (the “Offer Notice”). Owner shall not accept any such offer unless and until the Refusal Right has expired without exercise by City. City may exercise the Refusal Right by delivery to Owner of written notice of exercise within one hundred eighty (180) days after the City has received the Offer Notice.

(b) In the event that City does not deliver written notice to Owner of its intent to exercise the Refusal Right within 180 days from City’s receipt of the Offer Notice, then the Refusal Right granted herein shall terminate and be of no further force or effect. Furthermore, if the City delivers written notice to Owner of its intent to exercise the Refusal Right but does not purchase the Project within one hundred eighty (180) days from the date City delivered such written notice, then the Refusal Right granted herein shall terminate and be of no further force or effect.

(c) Notwithstanding anything to the contrary contained herein, the Refusal Right shall not apply to: (i) any refinancing of loans secured by the Project; and (ii) any sale or transfer of the Project (or any interest therein) to an entity that is directly or indirectly controlled by Mercy Housing California or Mercy Housing, Inc. (an “Affiliate”), including but not limited to a sale or transfer to a limited partnership where an Affiliate is the managing general partner or managing member of the managing general partner.

3.3 Exercise of Option and Refusal Right. The City's exercise of the Option or the Refusal Right shall be subject to necessary governmental approvals, which may include if applicable the prior approval of the Board of Supervisors and the Mayor, each in its sole and absolute discretion, and the appropriation of all necessary funds to pay the applicable Purchase Price pursuant to Article 4, below.

ARTICLE 4
Purchase Price

4.1 Purchase Price Under Option.

(a) The purchase price of the Project (the "Option Purchase Price") for the Option shall be the greater of (i) the fair market value of the Project (including any cash accounts associated with the Project) as of the date the City delivers the Exercise Notice or (ii) an amount equal to the sum of all outstanding principal and interest with respect to all Project debt.

(b) The fair market value of the Project and any associated cash accounts shall be determined as follows: as soon as practicable following the delivery of the City's notice to exercise the Option, Owner and City shall select a mutually acceptable appraiser. In the event that the parties are unable to agree upon an appraiser, Owner and City each shall select its own appraiser. If the difference between the fair market value set forth in the two appraisals is not more than ten percent (10%), the fair market value shall be the average of the two appraisals. If the difference between the two appraisals is greater than ten percent (10%), then the two selected appraisers shall jointly select a third appraiser whose determination of fair market value shall be deemed to be binding on all parties. The Owner and City shall each pay one-half of the fees and expenses of any appraiser. The appraiser may take into account any factors that it deems, in its sole and professional discretion, relevant in determining the fair market value. Any appraiser selected pursuant to this section shall be an MAI appraiser with at least five years of experience appraising similar properties in the same geographic area as the Project.

(c) For the purpose of calculating fair market value pursuant to section 4.1(b) above, each appraiser shall assume that the income and occupancy restrictions described in the Declaration will remain in full force and effect in perpetuity.

4.2 Purchase Price Under Refusal Right. During the ROFR Term, Owner will not sell the Project to any third party without first offering the Project for a period of one hundred eighty (180) days to City, at a price (the "Refusal Purchase Price") equal to the sum of (i) all outstanding principal and interest due with respect to all Project debt, plus (ii) all federal, state, and local taxes attributable to such sale, including those incurred or to be incurred by the Owner's partners (if any).

ARTICLE 5
Completion of Sale

5.1 Closing. Escrow for the sale of the Project shall close no later than one hundred eighty (180) days after Owner's receipt of City's written notice of exercise of the Option or the Refusal Right. If requested by either party, Owner and City shall enter into a written contract for

the purchase and sale of the Project on the City's then-standard purchase and sale agreement form in accordance with the terms of this Agreement and containing such other terms and conditions as are standard and customary for similar commercial transactions in the geographic area which the Project is located. The Option Purchase Price or Refusal Purchase Price, as applicable, shall be payable by either: (i) payment of all cash; or (ii) the assumption of all existing debt; provided however that any balance remaining after assumption of the existing debt shall be payable by City in readily available funds. As a condition to closing, City shall obtain all consents from any governmental agency and holder of a mortgage or deed of trust on the Project, whose consent to a sale is required; Owner shall cooperate fully with City in obtaining any such consents. The parties shall open an escrow for the purchase of the Project with a title company selected by City (the "Title Company"). Owner shall pay the cost of any transfer taxes applicable to the sale, if any. Owner shall be responsible for all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Project including, without limitation, any prepayment fees, penalties or charges. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by the Title Company. General real estate taxes payable for the tax year prior to year of closing and all prior years shall be paid by Owner at or before the closing. General real estate taxes payable for the tax year of the closing shall be prorated through escrow by Owner and City as of the closing Date. At or before the closing, Owner shall pay the full amount of any special assessments against the Project, including, without limitation, interest payable thereon, applicable to the period prior the closing Date.

5.2 Conveyance and Condition of the Project. The Owner's right, title and interest in the Project shall be conveyed by grant deed, subject to such liens, encumbrances and parties in possession as shall exist as of the closing date. The City shall accept the Project "AS IS, WHERE IS" and "WITH ALL FAULTS AND DEFECTS," latent or otherwise, without any warranty or representation as to the condition thereof whatsoever, including without limitation, without any warranty as to fitness for a particular purpose, habitability, or otherwise and no indemnity for hazardous waste or other conditions with respect to the Project will be provided.

ARTICLE 6

Assignment of Option and Refusal Right

In the event that City exercises its rights to the Option or Refusal Right pursuant to Article 3 of this Agreement, City may assign this Agreement and all of City's rights hereunder to a corporation that is tax-exempt under Section 501(c)(3) of the U.S. Internal Revenue Code and that is qualified to own and operate housing developments for low income persons; provided, however, that any such assignment shall be subject to all of the terms of this Agreement. City's right to assign pursuant to the preceding sentence shall only be permitted after City elects to exercise its rights to the Option or Refusal Right, as applicable, pursuant to Article 3 of this Agreement. City shall give prior written notice of any permitted assignment to the parties hereto and any such assignee shall enter into a written agreement accepting the assignment and assuming all of City's obligations under this Agreement. Except as specifically permitted herein, the City's rights hereunder shall not be assignable.

ARTICLE 7
Quitclaim Instrument on Termination of Option and Refusal Right

Upon termination of this Option and Refusal Right pursuant to Article 2 of this Agreement, City agrees to execute and deliver a written instrument (in form appropriate for recording if this Agreement or a memorandum thereof has been recorded as of such time) relinquishing and terminating its rights under this Agreement to Owner within thirty (30) days after termination and to execute, acknowledge and deliver any other documents required by Owner's title insurance company to remove this Agreement as an encumbrance against the Project.

ARTICLE 8
Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, including but not limited to overnight delivery or deposited in the certified U.S. mail, return receipt requested, first class and postage prepaid, addressed to each party at the following addresses or such other address as may be designated by a notice pursuant to this Article 8:

If to Owner:

Mercy Housing California 108, L.P.
1256 Market Street
San Francisco, CA 94102
Attention: President

with a copy to:

NEF Assignment Corporation
10 South Riverside Plaza, Suite 1700
Chicago, Illinois 60606
Attention: Asset Management – 1633 Valencia

with a copy to:

Holland & Knight LLP
10 St. James Avenue, 12th Floor
Boston, Massachusetts 02116
Attention: Sean B. Leonard

If to City:

City and County of San Francisco
Mayor's Office of Housing and Community Development
1 South Van Ness Avenue, 5th Floor
San Francisco, California 94103
ATTN: Asset Management

Any notice provided in accordance with this Article 8 shall be deemed to have been given on the delivery date or the date that delivery is refused by the addressee, as shown on the return receipt.

ARTICLE 9
Reserved

ARTICLE 10
Miscellaneous

(a) Contemporaneously with the execution of this Agreement, Owner and City shall execute, acknowledge and record the Memorandum of Option evidencing this Agreement in the Official Records of San Francisco County. The Memorandum of Option shall provide that the Option and Refusal Right shall survive exercise of the MGP Option, as defined below.

(b) The rights and obligations of the parties to this Agreement shall inure to the benefit of and bind their respective successors and assigns.

(c) The captions used herein are for convenience of reference only and are not part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

(d) Time is of the essence of each and all of the agreements, covenants and conditions of this Agreement.

(e) This Agreement shall be interpreted in accordance with and governed by the laws of the State of California.

(f) This Agreement and the other documents expressly incorporated by reference herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral and written. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by Owner and City.

(g) All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Partnership Agreement.

(h) This Agreement may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which taken together shall constitute a single agreement.

(i) If any part or portion of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, all of the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way

(j) Notwithstanding any provisions to the contrary set forth elsewhere herein, this Agreement and the rights of the City hereunder shall be subject and subordinate to the rights of all lenders that make a loan to Owner secured by a deed of trust lien on the Project. Accordingly, this Agreement shall automatically terminate upon the transfer of the Project to a secured lender in total or partial satisfaction of any loan secured by the Project. Each such lender shall be a third-party beneficiary of this provision.

(k) In the event of any sale or transfer of the Project (or any interest therein) to an entity that is directly or indirectly controlled by an Affiliate pursuant to the option and right of first refusal granted to Mercy Housing California, a California nonprofit public benefit corporation, under that certain Purchase Option Agreement dated concurrently herewith (collectively, the “MGP Option”), the Option and Refusal Right shall survive such transfer.

ARTICLE 11 City Required Provisions

11.1 Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or virgin redwood or virgin redwood wood product.

11.2 Sunshine Ordinance. Owner 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 public records subject to public disclosure. Owner hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

11.3 MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 et seq. City also urges companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

11.4 Prohibition Against Making Contributions to City. Owner acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any

time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

11.5 Non-Liability of City Officials, Employees, and Agents. Notwithstanding anything to the contrary in this Agreement, no elected or appointed board, commission, member, officer, employee, or other Agent of City will be personally liable to Owner, its successors, or its assigns for any City default or breach or for any amount that may become due to Owner or its successors or assigns, or for any obligation of City under this Owner.

11.6 Conflicts of Interest. Through its execution of this Agreement, Owner acknowledges that it is familiar with the provisions of City's Campaign and Governmental Conduct Code Article III, Chapter 2 and California Government Code Section 87100 et seq. and Section 1090 et seq., and certifies that it does not know of any facts that would constitute a violation of those provisions. If Owner becomes aware of any such fact during the term of this Agreement, Owner will immediately notify City.

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

OWNER:

MERCY HOUSING CALIFORNIA 108, L.P.,
a California limited partnership

By: Mercy Housing California 108 LLC,
a California limited liability company,
its general partner

By: Mercy Housing Calwest,
a California nonprofit public benefit corporation,
its sole member/manager

By: _____
Ramie Dare, Vice President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

Andrico Q. Penick
Director of Property

By: _____

Daniel Adams, Director,
Mayor's Office of Housing and
Community Development

APPROVED AS TO FORM:

DAVID CHIU
City Attorney

By: _____

Jessica Alfaro-Cassella
Deputy City Attorney

EXHIBIT A

(Legal Description)

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Parcel B of Parcel Map 11671, filed in the Office of the San Francisco County Recorder on December 21, 2023 in Book 54 of Parcel Maps, Pages 10-12, inclusive, as Instrument No. 2023103178, San Francisco County Official Records.

APN 6574-071 (formerly 6574-068, previously 6574-001A)