

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this "**Agreement**") is entered into as of this 14 day of November 2018, by and between the THE TREASURE ISLAND DEVELOPMENT AUTHORITY, a public body, corporate and politic of the State of California (the "**Authority**") and Mercy Housing California 82 LP, a California nonprofit public benefit corporation, and its permitted successors and assigns hereunder (the "**Optionee**"), with reference to the following facts:

RECITALS

A. The Authority is the fee owner of that certain real property and the improvements thereon, located at parcel C3.1, San Francisco and more particularly described in Exhibit A attached hereto (the "**Property**").

B. Optionee desires to develop the Property with approximately up to 159 units (including one manager's unit) for low income households (the "**Project**"). In order to develop the Project, Optionee desires to enter into a ground lease with the Authority in which the Authority will lease to Optionee the Property subject to certain conditions as provided herein.

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

D. In order to apply for Project financing, Optionee desires to obtain from the Authority, and the Authority 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 PARTIES AGREE AS FOLLOWS:

AGREEMENT

Section 1. Grant of Option. The Authority grants to Optionee the option to lease the Property and construct improvements to be located thereon for the consideration and under the terms and conditions set forth in this Agreement (the "**Option**").

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, 2022, (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 six (6) months (the "**Extended Term**") by giving written notice to the Authority 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 December 31 2022. 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 Authority staff agree to negotiate in good faith to complete all of the terms and conditions of the ground lease of the Property from the Authority to Optionee consistent with this Agreement (upon completion of such negotiations, the “**Ground Lease**”). The final terms of the Ground Lease must be agreed to by Optionee and the Authority’s Executive Direction or her/his designee, in writing, before Optionee’s exercise of the Option. 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. At any time following approval of the Ground Lease by the Authority’s Executive Director 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 Authority, Optionee may exercise the Option by giving written notice to the Authority (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 Authority, Optionee shall sign and deliver a quitclaim deed or such other document as may be reasonably required by the Authority to evidence the termination of the Option.

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 the Authority.

Section 4. Ground Lease of the Property. Authority staff shall prepare the initial form of ground lease substantially in the form used by the City and County of San Francisco’s (the “City”) Mayor’s Office of Housing and Community Development (“MOHCD”) for projects in which MOHCD is the fee owner of property that will be developed for affordable housing. The Ground Lease shall be in accordance with the following:

- i. Term of Ground Lease. The Ground Lease shall become effective immediately following the full execution by the parties and shall end ninety nine (99) years from the date of construction completion of the Project.
- ii. Taxes and Assessments. The tenant shall be responsible for the payment of any and all property taxes and assessments levied against the leasehold estate and the Property during the term of the Ground Lease subject to any abatement available therefrom.
- iii. Project Use; Existing Tenants. The Property shall be used during the term of the Ground Lease only for affordable housing, with maximum rent and income levels set at no greater than eighty percent (80%) Area Median Income (“AMI”) as determined by the United States Department of Housing and Urban Development for

the San Francisco area, adjusted for household size and high housing cost area, and approved ancillary uses, including community serving uses. If required by the Project's tax credit investor based on the Project's residual value analysis test, and if approved by the MOHCD Director in his or her reasonable discretion, the Ground Lease may permit increases in the maximum rent and income levels after the 55th year of the Ground Lease term, but such increases shall be limited only to the extent necessary to satisfy the Project's residual value analysis test. Notwithstanding the foregoing, any households occupying units on Treasure Island at the time of execution of that certain Disposition and Development Agreement between the Authority and Treasure Island Community Development, LLC dated June 28, 2011 who continue to occupy units at the time Optionee takes possession of the Property ("Existing Tenants") shall not be subject to such affordability restrictions to the extent such Existing Tenants do not qualify at the time Optionee takes possession of the Property.

- iv. Rent. The tenant shall pay the landlord annual rent in the amount of Fifteen thousand Dollars (\$15,000.00). If the Project's residual value analysis test supports including additional rent, the Ground Lease may include additional rent to the extent feasible, in an amount (when combined with the Base Rent) not to exceed a total of 10% of the land value of the Property (as determined by a MAI appraiser selected by, and at the sole cost of, the tenant, and set forth in the Ground Lease), to be paid solely as residual rent, payable only to the extent proceeds are available from the Project after deductions for Project operating expenses, mandatory debt service payments, property management fees, reserve deposits required by Project lenders, deferred developer fees, and asset and partnership management fees in amounts permitted in accordance with the then-current MOHCD policy.
- v. Construction and Operation of the Project. The tenant shall be responsible, at its sole cost, for construction, operation, and maintenance of the Project during the Ground Lease term.
- vi. Title to Property. The Ground Lease shall provide that the Authority will own fee title to the land, and the Optionee will own fee title to all improvements constructed or otherwise located on the land, during the Ground Lease term.
- vii. Disposition of Improvements at End of Lease. At the end of the Ground Lease term, fee title to all the improvements shall vest in the Authority without further action of any party, without any obligation by the Authority to pay any compensation therefor to

the tenant and without the necessity of a deed from the tenant to the Authority.

- viii. Mortgagee Protections. The Ground Lease shall include standard mortgagee protection provisions.
- ix. Defaults; Right to Cure. The Authority will provide any notice of any defaults under the Ground Lease to the tenant's limited partners and lenders, and allow any such parties the right to cure a default by the tenant under the Ground Lease. Pursuant to the terms of the Ground Lease, Authority shall not be entitled to terminate the Ground Lease following any uncured default by the tenant during the fifteen (15) year tax credit compliance period for the Project, except if such default is failure to pay rent.
- x. Encumbrances. The Ground Lease will permit the tenant to encumber its leasehold interest in the Property to secure any loans deemed necessary by the tenant, as approved by MOHCD. Any funds from a loan secured by the Property must be used for the development, maintenance, rehabilitation or operation of the Property.

Notwithstanding anything to the contrary contained herein, the Authority and Optionee hereby acknowledge and agree that the parties intend to enter into a Ground Lease that will facilitate development of a Project that can maintain long term affordability in a financially feasible manner. Accordingly, Authority and Optionee agree to negotiate in good faith Ground Lease terms that will account for the prevailing underwriting requirements, applicable state and federal law, and site conditions at the time.

Section 5. 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 Authority 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 6. 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:

Authority: Treasure Island Development Authority
 c/o Office of Economic and Workforce Development
 City Hall, Rm. 448
 1 Dr. Carlton B. Goodlett Place
 San Francisco, California 94102
 Attn: Treasure Island Project Director

and

Office of the City Attorney
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Real Estate/Finance

Optionee: Mercy Housing California
 1256 Market Street, 2nd Floor
 San Francisco, CA 94102
 Attn: Executive Director

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 7. Assignment of Option. All transfers by Optionee shall require the prior written consent of the Authority.

Section 8. 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 Treasure Island Development Authority's Board of Directors (the "Board of Directors") approves the Ground Lease with the substantive terms described in Section 4 without the need for additional action by the Board of Directors; provided, if there are any material changes that are to the detriment of the Authority, as determined by the Authority Executive Director, then such material changes will be subject to Board of Directors approval before the Ground Lease becomes effective.

Section 9. Time. Time is of the essence of this Agreement.

Section 10. 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 11. 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 12. 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 13. 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 14. 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 15. Attorneys' Fees. In any action between Optionee and the Authority 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 16. 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 Authority hereunder public records subject to public disclosure. Optionee hereby acknowledges that Authority may disclose any records, information and materials submitted to Authority in connection with this Agreement.

Section 17. 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 18. 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 19. Effective Date. Notwithstanding anything to the contrary contained herein, this Agreement shall not be effective until the date on which the Board of Directors 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 AUTHORITY HAS AUTHORITY TO COMMIT AUTHORITY 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 AUTHORITY 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 Authority have executed this Agreement as of the date first written above.

AUTHORITY:

TREASURE ISLAND DEVELOPMENT
AUTHORITY, a public body, corporate and
politic

By: 

Name: Bob Beck, Director

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____

Deputy City Attorney

OPTIONEE:

Mercy Housing California 82 LP, a California
nonprofit public benefit corporation

By: 

Name: Doug Shoemaker

Its: Executive Director

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AUTHORITY:

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AUTHORITY, a public body, corporate and
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By: _____

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By:  _____
Deputy City Attorney

OPTIONEE:

Mercy Housing California 82 LP, a California
nonprofit public benefit corporation

By: _____

Name: Doug Shoemaker

Its: Executive Director

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:

[LEGAL DESCRIPTION TO COME FROM PRELIMINARY REPORT]