

OPTION TO LEASE AGREEMENT

This Option to Lease Agreement (this “**Agreement**”) is entered into as of this ____ day of _____ 2016, 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 Potrero Housing Associates I, L.P., 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 1101 Connecticut Street, San Francisco and more particularly described in Exhibit A attached hereto (the “1101 CT Property”).
- B. The City has entered into an Option to Purchase and Sale Agreement for certain real property located at Connecticut Street and 25th Street and more particularly described in Exhibit B attached hereto (the “SFHA Property” and together with the 1101 CT Property, the “Property”).
- C. The City intends to merge the 1101 CT Property and the SFHA Property to facilitate affordable housing development on the resulting parcel.
- D. Optionee desires to develop the Property with up to 72 studio, one-, two- and three-bedroom units for low income families (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.
- E. Optionee intends to develop the Project with tax-exempt bonds, 4% Low Income Housing Tax Credits, State of California Department of Housing and Community Development Affordable Housing and Sustainable Communities funding, San Francisco Federal Home Loan Bank Affordable Housing Program funding, City financing and other sources, if necessary.
- F. 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 PARTIES AGREE AS FOLLOWS:

AGREEMENT

Section 1. Grant of Option. The City grants to Optionee the option to lease the Property and construct improvements 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, 2017, (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 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 December 31, 2017. 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, if the Ground Lease (defined below) is approved by the City’s Director of Property and the MOHCD Director pursuant to this Section 2, the City agrees to exercise its option to acquire the SFHA Property in a timely manner. During the Term, Optionee and City staff agree to negotiate in good faith to complete all of the terms and conditions of the ground lease of the Property from the City 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, the City’s Director of Property, and the MOHCD Director 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 (i) acquisition of the SFHA Property by the City and (ii) approval of the Ground Lease by the City’s Director of Property and the MOHCD Director and before the expiration of the Term, and so long as 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.

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.

Section 4. Ground Lease of the Property. MOHCD staff shall prepare the initial form of ground lease substantially in the form used by 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 seventy-five (75) years from the date of construction completion of the Project, provided that the tenant shall have an option to extend the term for an additional twenty-four (24) years for no additional consideration (but rent shall continue during any extended term as set forth below).
- 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. 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 60% Area Median Income (“AMI”) as determined by the United States Department of Housing and Urban Development for the San Francisco area, adjusted solely for household size, but not high housing cost area, and approved ancillary 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.
- iv. Rent. The tenant shall pay the landlord annual rent in the amount of ten percent (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), consisting of \$15,000 in base rent and the remainder in residual rent. Unpaid base rent shall accrue without interest. The residual rent shall be 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. Unpaid residual rent shall not accrue. 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, residual rent shall only be payable after full repayment of any residual receipts Project financing provided by MOHCD. The annual rent shall be adjusted on the fifteenth (15th) anniversary of the expiration of the first full calendar lease year and every fifteen (15) years thereafter, and shall be equal to ten percent (10%) of then appraised value of the land as determined by a MAI appraiser selected by, and at the sole cost of, the tenant. Any such adjustment shall be made to the residual rent and not the base rent.

- 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 City 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 City without further action of any party, without any obligation by the City to pay any compensation therefor to the tenant and without the necessity of a deed from the tenant to the City.
- viii. Mortgagee Protections. The Ground Lease shall include standard mortgagee protection provisions.
- ix. Defaults; Right to Cure. The City 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, City 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.

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 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 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:

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: Potrero Housing Associates I, LP
600 California Street, Suite 900
San Francisco, CA 94108
Attn: President

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. 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 MCB Family Housing Inc. or its affiliate is the managing member or partner, or a limited partnership in which MCB Family Housing Inc. or its affiliate is a general partner. All other transfers by Optionee shall require the prior written consent of the City.

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 City's Board of Supervisors approves the 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 detriment of the City, as determined by the MOHCD Director, then such material changes will be subject to Board of Supervisor 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 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 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 City hereunder 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 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 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:

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation

By: _____

John Updike
Director of Property

OPTIONEE:

Potrero Housing Associates I, L.P.,
a California Limited Partnership

By: MCB Family Housing Inc.,
a California nonprofit public benefit
corporation

Its: General Partner

By: _____

By: _____

Olson Lee
Director, Mayor's Office of
Housing and Community Development

APPROVED AS TO FORM:
DENNIS J. HERRERA
City Attorney

By: _____

Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF 1101 CT PROPERTY

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

BEGINNING AT THE POINT OF INTERSECTION OF THE SOUTHERLY LINE OF TWENTY-FIFTH STREET AND THE WESTERLY LINE OF MISSOURI STREET; RUNNING THENCE SOUTHERLY ALONG SAID WESTERLY LINE OF MISSOURI STREET 150 FEET; THENCE AT A RIGHT ANGLE WESTERLY 200 FEET TO THE EASTERLY LINE OF CONNECTICUT STREET; THENCE AT A RIGHT ANGLE NORTHERLY ALONG SAID EASTERLY LINE OF CONNECTICUT STREET 100 FEET; THENCE AT A RIGHT ANGLE EASTERLY 100 FEET; THENCE A RIGHT ANGLE NORTHERLY 50 FEET TO SAID SOUTHERLY LINE OF TWENTY-FIFTH STREET; THENCE AT A RIGHT ANGLE EASTERLY ALONG SAID SOUTHERLY LINE 100 FEET TO THE POINT OF BEGINNING.
BEING A PORTION OF POTRERO NUEVA BLOCK 253.

APN: LOT 007, BLOCK 4287

EXHIBIT B

LEGAL DESCRIPTION OF SFHA PROPERTY

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

Beginning at the point of intersection of the Southerly line of Twenty-fifth Street and the Easterly line of Connecticut Street; running thence Southerly along said line of Connecticut Street fifty (50) feet; thence at a right angle Easterly one hundred (100) feet; thence at a right angle Northerly fifty (50) feet to the Southerly line of Twenty-fifth Street; thence at a right angle Westerly along said line of Twenty-fifth Street one hundred (100) feet to the point of beginning.

Being portion of Potrero Nuevo Block Nos. 253-254.

Assessor's Lot 001A; Block 4287