

FORM OF GROUND LEASE OPTION AGREEMENT

[Site Address], [City], CA, [Zip Code]

This Ground Lease Option Agreement ("**Agreement**") is entered into by and between the STATE OF CALIFORNIA ("**STATE**"), acting by and through the DEPARTMENT OF GENERAL SERVICES ("**DGS**"), and [OPTIONEE/ORGANIZATION TYPE], "**OPTIONEE**," with the consent of the [JURISDICTIONAL AGENCY], and the DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ("**HCD**"). HCD is not a party to this Agreement. STATE and OPTIONEE may sometimes hereinafter be referred to as "**Party**" or collectively as the "**Parties**". Capitalized terms used in this Agreement shall have the meanings ascribed to them by the section in which such term is first defined.

RECITALS

WHEREAS, STATE is the fee owner of that certain real property, together with all improvements thereon, located at [Site Address], in the City of [____], County of [____], State of California, and is more particularly described and depicted in **Exhibits A and B**, attached hereto, and incorporated herein by this reference (the "**Option Property**").

WHEREAS, the Option Property was offered for solicitation in accordance with the Governor's Executive Order N-06-19 and OPTIONEE was selected based upon a responsive proposal ("**OPTIONEE'S Proposal**") to the solicitation to facilitate the development of an affordable housing project described in OPTIONEE'S Proposal (the "**Proposed Project**") subject to the terms and conditions contained in this Agreement;

WHEREAS, STATE and OPTIONEE desire to enter into a ninety-nine (99) year ground lease for the development and construction of the Proposed Project consistent with OPTIONEE'S Proposal and the requirements and guidelines set forth in the solicitation.

WHEREAS, this Agreement is not a lease and grants OPTIONEE no real property interest in or right to use or otherwise occupy the Option Property.

WHEREAS, a ground lease or any other real property interest agreement that binds STATE to grant a leasehold interest to OPTIONEE shall not be entered into or otherwise executed, if at all, unless and until (i) OPTIONEE properly exercises the option granted herein, and (ii) all conditions and obligations contained herein have been fully satisfied and/or waived in writing by the Party benefitted thereby.

WHEREAS, in order for OPTIONEE to demonstrate site control over the Option Property for the purpose of submitting its financing applications and to provide the PARTIES an understanding of the development potential of the Option Property before entering into a ground lease, if at all, OPTIONEE desires to obtain an option to ground lease the Option Property from STATE and STATE is willing to grant an option to OPTIONEE to ground lease the Option Property pursuant to the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the above recitals, all of which are incorporated into this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Effective Date. The “**Effective Date**” of this Agreement shall be the date it is signed on behalf of STATE by and through DGS.
2. Option. STATE hereby grants OPTIONEE the option to ground lease the Option Property from STATE upon the terms and conditions set forth in this Agreement (the “**Option**”) during the Option Term (as defined in Section 4, below).
3. Option Consideration. No later than ten (10) business days after the Effective Date, OPTIONEE shall pay STATE the sum of ONE HUNDRED AND NO/100THS DOLLARS (\$100.00) (“**Option Payment**”). The Option Payment shall not be refundable for any reason and shall not be credited to any payments under the Ground Lease.
4. Option Term. The “**Option Term**” shall commence upon the Effective Date and shall expire **three years** from the Effective Date provided however that STATE in its reasonable discretion reserves the right to extend the Expiration Date for up to two (2) additional one-year periods. Notwithstanding, at any time and in OPTIONEE’S sole discretion, OPTIONEE may terminate this Agreement by providing written notice to STATE of OPTIONEE’S election to terminate this Agreement. STATE shall have the right, though not the obligation, to terminate this Agreement should OPTIONEE fail to perform any of its obligations in accordance with the Performance Milestones established below in Exhibit E.
5. Governance of Proposed Project Changes. The Proposed Project includes the Primary Components identified in Table A below. Primary Components are aspects of the Proposed Project, as described in OPTIONEE’Ss Proposal, that were scored, were submission requirements, and/or impact the project budget by the thresholds established in the Change Reporting Form (Exhibit G), and that contributed significantly to STATE’s decision to select OPTIONEE. Certain deviations from, discrepancies between, and/or modifications of these Primary Components will be classified as a Significant Change. The thresholds for what constitutes a Significant Change are described below in the third column of Table A. The Primary Components established in the second column of Table A reflect the Proposed Project as described in OPTIONEE’S Proposal, and proposed changes are to be measured cumulatively against that baseline. STATE shall approve all Significant Changes. If STATE and OPTIONEE disagree on whether a deviation constitutes a Significant Change, that determination shall be made at the sole and absolute discretion of STATE.
6. Change Noticing and Description of Primary Components of the Proposed Project. OPTIONEE must provide notice to STATE of any proposed Significant Change and

the unforeseen circumstance that requires the Significant Change at the earliest reasonable time, but in any event no later than 30 days after OPTIONEE becomes aware of the proposed Significant Change. Notice of a proposed Significant Change shall be provided to STATE by OPTIONEE in the form and manner prescribed by STATE, including but not limited to the Excess Sites Change Reporting Form (Exhibit G). All Significant Changes are subject to review and approval by STATE. Should STATE not consent to a proposed Significant Change, the Parties mutually agree to work in good faith to come to a resolution acceptable to both Parties. Should the Parties not be able to agree following good-faith negotiations regarding a resolution of the proposed Significant Change, STATE shall have the right to terminate this Agreement and re-award the Option Property.

SAMPLE

Table A – Identification and Description of Primary Components of Proposed Project

Primary Component	Description of Primary Component as presented in OPTIONEE's Proposed Project	Thresholds for Significant Change
Unit Count		Any change
Unit Mix	See Exhibit H	Any change
Average Affordability (as calculated by Excess Sites Data Reporting Tool)		Any change
Total Bedroom Count		Any change
Overall Range of Income Levels Served		Any change
Financing Approach/Capital Stack		Any change
Estimated Pre-Development Timeline		± 6 months
Project Type / Populations Served		Any change
Occupancy and/or Tenant Admission Preferences		Any change
Per-Unit Hard Cost		± 7%
Per-Square-Foot Hard Cost		± 7%
Building Height		± 2 floors, ± 28 ft
Construction methodology		Any change
Building structural system		Any change
Mandatory Team Members, as identified in the Proposal Submission Guidelines		Any change
Emerging Developer, MBE/WBE/DBE Participation, Compliance with TCAC-required Housing Supplier Diversity Plan		Any change
Number of accessible units for occupancy by persons with mobility impairments or hearing, vision, or other sensory impairments		Any change
Construction Type		Any change
Parking ratio		± .1 spaces/unit ratio

7. Required Data Reporting. OPTIONEE is required to provide STATE with an updated version of the Excess Sites Data Reporting Tool (Exhibit F) every six months, beginning 12 months following notice of award. Any delayed report by OPTIONEE to STATE of a Significant Change provided solely by a regularly-scheduled Excess Sites Data Report (i.e. outside of the 30-day notification timeline outlined in Section 6 above) may be grounds for termination of this Agreement by STATE.
8. Conditions to Exercise Option. Subject to the conditions set forth below and the performance milestones established in Exhibit E, the Option can only be exercised by OPTIONEE'S execution and delivery of a written exercise of Option to STATE during the Option Term. The Option may not be exercised until all the conditions set forth below are satisfied.
- a. Acceptance of Conditions of Title and Legal Description OPTIONEE shall approve all title exceptions and the legal description for the Option Property.
 - b. Optionee shall conduct investigations, tests and studies (including, without limitation, building codes and other governmental regulations, architectural inspections, engineering tests, economic feasibility studies and soils, seismic and geologic reports, environmental testing and investigations) to determine, among other things, if all needed entitlements can be procured in an acceptable form to develop and construct the Project as identified in OPTIONEE'S Proposal at the Option Property with respect to the Option Property as OPTIONEE may elect to make or maintain. In accordance with the terms of that certain Due Diligence Right of Entry (the "**ROE**") attached hereto as **Exhibit C** and made a part hereof by and between OPTIONEE and DGS, OPTIONEE has been given permission by STATE to conduct due diligence.
 - c. Environmental Requirements. OPTIONEE shall be responsible for obtaining all necessary entitlements for the Project, including those related to compliance with CEQA. The Parties agree and acknowledge that STATE retains full discretion to approve, disapprove or condition the final Project to be developed and constructed at the Option Property, including, but not limited to, requiring additional mitigation measures or alternatives necessary to avoid or substantially lessen the environmental impacts of the Project. Any approval of the Project is expressly conditioned on OPTIONEE'S compliance with any applicable CEQA requirements.
 - d. Project Financing. OPTIONEE shall submit to STATE:
 - i. OPTIONEE shall provide satisfactory evidence of OPTIONEE'S ability to finance the cost of the Project which may be evidenced by commitments from OPTIONEE'S tax credit investors and/or the

lenders providing development and construction financing for the Project.

- e. Affirmative Fair Housing Compliance. In all of OPTIONEE'S activities related to the Option Property, OPTIONEE shall comply with all applicable state and federal fair housing laws, including the Americans with Disabilities Act, the Fair Housing Amendments Act, the California Fair Employment and Housing Act, the Unruh Act, Government Code section 11135, Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. section 794), and applicable regulations issued under those statutes, including, but not limited to, 24 C.F.R. Part 8, C.F.R. Part 100, 28 C.F.R. Part 35, and Cal Code Regs., title 2, division 4.1, chapter 5, subchapters 6 and 7.
 - i. Prior to the expiration of the Option Term, OPTIONEE shall adopt a written non-discrimination policy. OPTIONEE shall provide a copy of this policy to HCD for its review and approval prior to the earlier to occur of (a) two (2) months prior to the expiration of the Option Term or (b) execution of the Ground Lease. The policy shall state that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with program funds made available to the Option Project on the grounds of: (i) race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, disability, age, medical condition, genetic information, citizenship, primary language, immigration status (except where explicitly prohibited by federal law), veteran or military status, or all other personal characteristics protected from discrimination under federal or state fair housing laws, (ii) being perceived to have any of these characteristics, or (iii) being associated with a person who has, or is perceived to have, any of these characteristics.
 - ii. OPTIONEE shall develop and implement an affirmative fair housing marketing plan that is satisfactory to HCD. OPTIONEE shall provide a copy of this plan to HCD for its review and approval prior to the earlier of (a) two (2) months prior to the expiration of the Option Term or (b) execution of the Ground Lease. Appropriate aspects of the plan shall be incorporated into the ongoing property management plan for the Option Property to ensure positive outreach and informational efforts to those who are least likely to know about and apply for housing.
9. Ground Lease of the Option Property. If all necessary conditions and obligations contained in this Agreement are satisfied and if OPTIONEE elects to exercise the

Option and ground lease the Option Property from STATE, STATE and OPTIONEE shall execute a ground lease substantially in the form of **Exhibit D** attached hereto. If a ground lease cannot be agreed upon by the Parties, this Agreement will terminate upon written notice to the non-terminating Party with no fault attributed to either Party. OPTIONEE and STATE agree to execute and acknowledge the form of the Ground Lease Rider required to be executed by the California Tax Credit Allocation Committee and HCD in connection with the approved financing of the Project.

10. No Construction. OPTIONEE shall, prior to commencement of any construction on the Option Property, have received environmental clearance on the Project and entered into the Ground Lease
11. Assignment. The qualifications and identity of OPTIONEE are of particular concern to STATE. It is because of those unique qualifications and identity that STATE has entered into this Agreement. Accordingly, OPTIONEE'S rights and obligations under this Agreement are not assignable or transferable, and any purported voluntary or involuntary assignment or transfer of OPTIONEE'S rights or obligations hereunder shall be null and void. Notwithstanding the foregoing, OPTIONEE may assign this Agreement with the prior written consent of STATE, which consent shall not be unreasonably withheld, to an entity which controls, is controlled by, or is under common control with OPTIONEE. If STATE consents to the aforesaid assignment and assumption, OPTIONEE is neither released nor discharged from any of its obligations under the Option Agreement, arising from and after the Effective Date.
12. Additional Agreements. The Parties acknowledge and agree that if OPTIONEE exercises the Option, additional agreements will be needed in furtherance of the Ground Lease. The Parties agree to promptly obtain all necessary approvals and execute and deliver such papers, documents and instruments and perform all acts reasonably necessary or proper to effectuate the Ground Lease.
13. Remedies. If any of the Parties fails to perform in a timely manner any obligation under this Agreement, the non-defaulting Party shall give written notice of default to the defaulting Party, specifying the nature of the default and the required action to cure the default. If a default remains uncured for thirty (30) days after receipt by the defaulting Party of such notice, the non-defaulting Party shall be entitled to the remedies for breach of contract that are available under applicable law.
14. Notices. All notices under this Agreement shall be in writing and sent by (a) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered three (3) business days after deposit, postage prepaid with the United States Postal Service, (b) by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with that courier, or (c) telecopy, email or similar means, if a copy of the notice is also sent by United States Postal Service. Mailed copies of telecopied or emailed notices are **not** required when submitting notice of a project change via the Excess Sites Change Reporting Form or Excess Sites Data Reporting Tool. Physical notices shall be addressed as follows:

If to OPTIONEE: [Optionee/Address]
 [Address]
 [City, CA Zip Code]
 Attention: [_____]

If to STATE: Department of General Services
 Real Estate Services Division
 707 Third Street, 5th floor (MS 5-505)
 West Sacramento, CA 95605
 Attention: [_____]

15. Time is of the Essence. Time is of the essence for this Agreement.

16. Exhibits Incorporated by Reference. The following **Exhibits** are attached to this Agreement and incorporated by this reference:

Exhibit A. Legal Description of the Option Property

Exhibit B. Map Depiction of the Option Property

Exhibit C. Form of the Ground Lease

Exhibit D. Performance Milestones

Exhibit E. Excess Sites Data Reporting Tool

Exhibit F. Form of the Change Reporting Form

Exhibit G. Unit Mix of the Proposed Project

17. Applicable Law. The Parties acknowledge that this Agreement has been negotiated and entered into in the State of California. The PARTIES expressly agree that this Agreement shall in all respects be governed by the laws of the State of California.

18. Severability. Nothing contained herein shall be construed as requiring the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present statute, law, ordinance or regulation as to which the PARTIES have no legal right to contract, the latter shall prevail, but the affected provisions of this Agreement shall be limited only to the extent necessary to bring them within the requirements of such law.

19. Legislative Approval. Any obligation of STATE created by or arising from this Agreement shall not impose a debt upon STATE but shall be payable solely out of funds duly authorized and appropriated by the California State Legislature.

20. Successor/Assigns. The Option shall be binding on OPTIONEE'S and STATE's successors and assigns and heirs with respect to the Option Property and shall run as a covenant against the Option Property until the termination or expiration thereof.
21. Separate Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by electronic mail in "portable document format" ("pdf") form or by any other electronic means shall constitute effective execution and delivery of this Agreement and shall have the same effect as copies executed and delivered with original signatures.
22. Entire Agreement. This Agreement represents the full, complete, and entire agreement between the PARTIES with respect to the subject matter hereof. The Agreement will take full force and effect upon the Effective Date.

[SIGNATURE PAGE FOLLOWS]

SAMPLE

The PARTIES therefore execute this Agreement.

OPTIONEE:

By: [Name, type of organization-update as necessary],
a California limited liability, company,
its general partner

By: Name, Inc.,
[Example – a California nonprofit public benefit corporation,
its sole member/manager]

By: _____
[Name, Title]

Date: _____

SAMPLE

STATE:

STATE OF CALIFORNIA
Department of General Services

By: _____
Kerry Zadel, Assistant Branch Chief
Department of General Services

Date: _____

STATE OF CALIFORNIA
[Agency with control and jurisdiction over the site]

By: _____
Name, Title
Department

Date: _____

STATE OF CALIFORNIA
Department of Housing and Community Development

By: _____
Megan Kirkeby, Deputy Director
Division of Housing Policy Development

Date: _____

EXHIBIT A

Legal Description of the Option Property

SAMPLE

EXHIBIT B

Map Depiction of the Option Property

SAMPLE

EXHIBIT C

Form of the Ground Lease

SAMPLE

EXHIBIT D

Performance Milestones

<u>Performance Milestone*</u>	<u>Completion Date**</u>
State awards Option Property to OPTIONEE	Effective Date
OPTIONEE to submit to HCD first completed Excess Sites Data Reporting Tool (and twice annually thereafter in accordance with section 7 of this Agreement)	Within 30 days after Effective Date
OPTIONEE to establish Limited Partnership or ultimate ownership entity of the Proposed Project	TBD
OPTIONEE to submit to DGS will-serve letters for water and sewer or status report of timeline for obtaining services, location of utility connections and description of any required easement.	TBD
OPTIONEE to submit to DGS preliminary site plan for Fire and Life safety (ingress and egress), including encroachment permit street access. Demonstrated general agreement with applicable agency (City, County, Caltrans) for Proposed Project's driveway.	TBD
OPTIONEE to submit required CEQA package to DGS' Environmental Services Section for review.	TBD
OPTIONEE to file applicable environmental determination with the Governor's Office of Planning and Research (OPR) CEQA Clearinghouse.	TBD
OPTIONEE to submit first gap financing application	TBD
OPTIONEE to submit second gap financing application	TBD
OPTIONEE to submit third gap financing application	TBD
OPTIONEE to submit CDLAC and/or CTCAC Application(s) (or other permanent funding source)	TBD
OPTIONEE to submit final building plans to DGS	TBD
OPTIONEE to submit to HCD and receive approval for an affirmative fair housing marketing plan for the Proposed Project	TBD
OPTIONEE to submit to HCD and receive approval for Optionee's adopted non-discrimination policy	TBD

OPTIONEE to submit to HCD and DGS Optionee's evidence of financing commitments	Before end of LOA term
OPTIONEE to exercise option to lease the Option Property	No later than deadline from public funder or within 3.5 years from Effective Date.
OPTIONEE to close on construction financing	No later than deadline from public funder or within 3.5 years from Effective Date.

*Completion dates will be populated with dates from OPTIONEE'S Proposal as submitted via the Excel Submission Tool – Project Overview Tab, Development Schedule, where applicable. In some cases, STATE may allow for flexibility, but not any that would delay close on construction financing beyond 6 months after the term of this Agreement.

SAMPLE

EXHIBIT E

Form of Excess Sites Data Reporting Tool

SAMPLE

EXHIBIT F

Form of the Excess Sites Change Reporting Form

SAMPLE

EXHIBIT H

Unit Mix of the Proposed Project

AMI Level	Studio	1-bed	2-bed	3-bed	4-bed	Total
15%						0
20%						0
25%						0
30%						0
35%						0
40%						0
45%						0
50%						0
55%						0
60%						0
65%						0
70%						0
75%						0
80%						0
85%						0
90%						0
95%						0
100%						0
105%						0
110%						0
115%						0
120%						0
Market						0
Manager						0
Total	0	0	0	0	0	0