

MANAGEMENT & LEASE AGREEMENT

This Management and Lease Agreement (“**Agreement**”) is entered into as of January 31, 2014, by and between THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (the “City”), represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development (“MOHCD”), and MERCY MIDTOWN INC., a California nonprofit public benefit corporation (“Mercy”).

RECITALS

A. The City is the fee owner of the land described in Attachment 1 attached hereto (“Site”) which consists of approximately 54,918 square feet of land, with 6 buildings containing 139 residential dwelling units (the “Improvements”, and together with the Site, the “Premises”).

B. City and Mercy wish to enter into this Agreement to provide for Mercy's leasing, operation and maintenance of the Site and Improvements.

NOW THEREFORE, in consideration of the mutual obligations of the parties hereto, the City and Mercy hereby agree as follows:

ARTICLE 1: DEFINITIONS

Terms used herein have the meanings given them when first used or as set forth in this Article 1, unless the context clearly requires otherwise.

1.01 Agents means agents, affiliates, subsidiaries, licensees, contractors, subcontractors, and each of the persons acting by, through or under each of them, and their respective, legal representatives, successors and assigns.

1.02 Agreement Date means the date that this Agreement is deemed to be entered into and effective, as set forth on the first page.

1.03 Existing Occupants means any person or entity authorized by Mercy to occupy a residential unit on the Premises, or any portion thereof, who reside on the Premises as of the Agreement Date.

1.04 Improvements mean all physical construction, including all structures, fixtures and other improvements located on the Site.

1.05 Invitees means all clients, customers, vendors, invitees, guests, or licensees, but excluding the Existing Occupants.

1.06 Law means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or governmental agency.

1.07 Managing Agent means Mercy Housing Management Group.

1.08 MOHCD means the Mayor's Office of Housing and Community Development for the City.

1.09 Operating Budget means either the Interim Operating Budget or the Final Operating Budget, each as defined in Section 5.02 herein.

1.10 Premises mean the Site together with any Improvements thereon.

1.11 Project Expenses means the following costs, which may be paid from Project Income in the following order of priority to the extent of available Project Income: (i) all charges incurred in the operation of the Premises for utilities, real estate taxes and assessments and premiums for insurance required under this Agreement; (ii) salaries, wages and any other compensation due and payable to the employees or agents of Mercy and Managing Agent employed in connection with the Premises, including all related withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments; (iii) required payments

of interest and principal, if any, on any junior or senior financing secured by the Premises that has been approved by the City; (iv) all other expenses actually incurred to cover operating costs of the Premises, including maintenance and repairs and the fee of any managing agent as indicated in Mercy's annual operating budget; and (v) any other costs included in Mercy's annual operating budget approved by the City.

1.12 Project Income means all income and receipts in any form received by Mercy from the operation of the Premises, including rents, fees, deposits (other than Mercy security deposits), any accrued interest disbursed from any reserve account required by any Lender for a purpose other than that for which the reserve account was established, reimbursements and other charges paid to Mercy in connection with the Premises, exclusive of grants or other subsidies for supportive services to Existing Occupants.

1.13 Rental Credit Program means the program to be established by MOHCD whereby rental charges for Existing Occupants will be set forth, along with any applicable rent credit subsidy for individual Existing Occupants provided by the City.

1.14 Site means the real property as more particularly described in the Legal Description attached hereto as Attachment 1. Whenever an Attachment is referenced under this Agreement, it means an attachment to this Agreement unless otherwise specifically identified. Whenever a section, article or paragraph is referenced under this Agreement, it is a reference to this Agreement unless otherwise specifically referenced.

ARTICLE 2: TERM

(a) **Term.** The term of this Agreement shall be on a month-to-month basis commencing upon the Agreement Date. City and Mercy shall each have the right to terminate this Agreement upon written notice to the other party. The term of this Agreement shall expire

thirty (30) days from the date said written notice is delivered.

(b) Holding Over. Any holding over after expiration of the term of the Agreement without the City's consent will constitute a default by Mercy and entitle the City to exercise any or all of its remedies as provided in this Agreement, even if the City elects to accept one or more payments of Rent.

(c) Termination Procedure. Upon termination of this Agreement, Mercy shall assign all security deposits and other Project funds (including all funds in reserve accounts) to the City, and City shall assume all obligations with respect to the Premises and the Existing Occupants from the date of the termination.

ARTICLE 3: RENT

Mercy shall, by the twentieth (20th) day of each month, pay the City monthly rent in the amount of One Dollar (\$1.00) per month, without necessity of demand, notice or invoice.

ARTICLE 4: CITY COVENANTS

The City is duly created, validly existing and in good standing under the Law, and has full right, power and authority to enter into and perform its obligations under this Agreement. City covenants and warrants that Mercy shall have, hold and enjoy, during the Agreement term, peaceful, quiet and undisputed possession of the Premises without hindrance or molestation by or from anyone so long as the Mercy is not in default under this Agreement.

ARTICLE 5: MANAGEMENT & OPERATIONS

5.01 Permitted Uses

Mercy and City hereby acknowledge and agree that during the term of this Agreement, Mercy may use the Premises to operate, maintain, and manage the Premises as a residential housing development and for no other purposes.

5.02 Project Income and Project Expenses; Operating Budget

(a) Mercy will collect all rents from Existing Occupants, which will be used in accordance with a budget approved by the City. All Project Income will be used to pay Project Expenses. All rents collected for the month of February 2014 will be transferred to Mercy's General Operating Account (defined herein) for the Premises. Mercy shall have no obligation to pay any costs incurred prior to the Agreement Date.

(b) From the Agreement Date until the date the Interim Operating Budget (defined below) is approved, Mercy shall operate the Premises under the existing operating budget. Mercy shall prepare and submit a new interim operating budget to the City for its approval within 60 days of the Agreement Date, covering the remaining calendar year (the "Interim Operating Budget"). The Interim Operating Budget shall be based on current assumptions regarding anticipated Project Income and a detailed estimate of all anticipated Project Expenses, and shall include the estimated costs of completing the income certifications and implementing the Rental Credit Program. Mercy shall not, without the MOHCD Director's prior written consent, which consent shall not be unreasonably withheld or delayed (and when given shall be deemed an amendment to the approved budget), incur expenses in any calendar month that exceed the amount listed in the Interim Operating Budget for such item for such month by more than five percent (5%) (treating amounts paid less frequently than monthly, as accruing evenly over the appropriate period), or for any year, that exceed the amount listed in the Operating Budget for such item for such year by more than five percent (5%); provided however that Emergency Repairs (as defined herein) shall not be subject to this provision and shall instead be governed by Section 6.02 herein.

(c) Within 30 days following the later of completion of the income certifications for the Existing Occupants in accordance with Section 5.03 below or completion of the Rental Credit Program, Mercy shall prepare and submit a new annual operating budget to the City for its approval, covering the remaining calendar year (to the extent applicable) and the following calendar year (the “Final Operating Budget”). The Final Operating Budget shall be based on anticipated Project Income under the Rental Credit Program and a detailed estimate of all anticipated Project Expenses. The Final Operating Budget will be subject to the same requirements as set forth in Section 5.02(b) above.

(d) In the event that Project Expenses exceed Project Income in any calendar month, and Mercy is in compliance with Section 5.02(b) or 5.02(c) above, as applicable, Mercy may withdraw funds from the Operating Reserve in accordance with Section 7.03 herein in the amount of the excess Project Expenses.

5.03 Leasing

Upon completion of the income certifications for Existing Occupants, Mercy shall use commercially reasonable efforts to promptly enter into new rental agreements with all Existing Occupants, which agreements shall be on a year-to-year basis. The City shall have the right to approve the form of rental agreement for all Existing Occupants. At a minimum, such rental agreements must allow the Existing Occupant to terminate the agreement without cause and without penalty upon thirty days notice. Mercy shall not lease a unit nor enter into new rental agreements with anyone who is not an Existing Occupant.

Mercy shall be responsible for enforcing, and shall take commercially reasonable actions to enforce, the terms and conditions of all rental agreements, including, without limitation, (i) the collection of all such rents when due, (ii) the preparation and delivery to Existing Occupants of

any appropriate late payment, default or other notices, (iii) the conducting of exit interviews and walk-throughs, and (iv) the timely disbursement of all security deposits in accordance with Section 7.02 herein. Without violating any privacy or other applicable Laws, Mercy shall use commercially reasonable efforts to insure that all Existing Occupants comply with the terms and conditions of their respective rental agreements.

5.04 No Displacement of Existing Occupants

Mercy may not terminate the tenancy or refuse to renew any lease for an Existing Occupant, except for serious or repeated violations of the terms and conditions of the lease, for violation of applicable Laws or other good cause. Any termination or refusal to renew the lease for an Existing Occupant must be preceded by not less than thirty (30) days' written notice to the Existing Occupant specifying the grounds for the action.

5.05 Income Certifications

Mercy shall use commercially reasonable efforts to promptly obtain income certifications for all Existing Occupants using the standard certification form required by MOHCD for multifamily affordable housing rental developments.

5.06 Rents; Rental Credit Program

From the period commencing on the Agreement Date and ending on the date the Rental Credit Program becomes effective, rents charged to each Existing Occupant shall not exceed the rent amount charged such occupant as of the Agreement Date. City shall provide Mercy with the Rental Credit Program upon City's completion of the terms thereof. Upon completion of the income certifications for all Existing Occupants and completion of the Rental Credit Program, Mercy shall charge rents at the rates set forth in the Rental Credit Program; provided, however,

that for any Existing Occupant that refuses to complete an income certification, Mercy may charge such tenant a market rate rent.

5.07 No Unlawful Uses or Nuisances.

Mercy may not use or occupy any portion of the Premises, or permit the use or occupancy thereof, in violation of any applicable Law, or permit to be carried on any use: (a) in violation of the conditions of any certificate of occupancy; (b) that is prohibited by the insurance policies carried by Mercy; or (c) or that will increase in any way the existing premiums on (or otherwise affect) fire or any other insurance on the Premises or any personal property located on the Premises. Mercy must take all precautions to eliminate immediately any nuisances or hazards relating to its activities on or about the Premises.

5.08 Covenant Against Waste.

Mercy may not cause or permit any waste, damage or injury to any portion of the Premises; provided, however, that City acknowledges that the Premises are currently in disrepair.

5.09 Covenant Against Dumping.

Mercy may not cause or permit the dumping or other disposal on, under or about the Property of landfill, refuse or Hazardous Material, except any landfill associated with permitted construction and landscaping activities.

5.10 No Development

Mercy agrees that there shall be no physical construction on the Site during the term of this Agreement, except in connection with any necessary repairs. In addition, neither Mercy, nor any voluntary or involuntary successor or assign, shall make or permit any Change (as defined below) in the Improvements, unless the express prior written consent for any change shall have been requested in writing from the City and obtained, and, if obtained, upon such terms and conditions as the City may reasonably be require. The City agrees not to withhold, condition or delay its response to such a request unreasonably.

“Change” as used in this Article means any alteration, modification, addition and/or substitution of or to the Site, the Improvements, and/or the density of development which differs materially from that which existed upon the Agreement Date, and shall include without limitation the exterior design, exterior materials and/or exterior color. For purposes of the foregoing, exterior shall mean and include the roof of the Improvements. Changes shall not include repairs, maintenance and interior alterations in the normal course of operation of the Premises, or as may be required in an emergency to protect the safety and well-being of the Existing Occupants, Mercy, or anyone lawfully permitted on the Site.

5.11 Reports

In addition to any reports required elsewhere in this Agreement, Mercy must submit annual reports to MOHCD, and to any other City department indicated in written notice to Mercy, on or before April 1 of each calendar year, indicating the following information, as of December 31 of the previous year: (a) whether a unit is vacant or occupied; (b) the income level of the Existing Occupants for each unit; (c) rental rates for each unit, including any rental subsidies; and (d) any other information reasonably required by the City. The first such report shall be due

within 30 days after completion of the income certifications (even if that date is after April 1, 2014), but only if this Agreement is not terminated prior to such date.

ARTICLE 6: MAINTENANCE AND REPAIR RESPONSIBILITIES

6.01 General Maintenance and Repair Obligations.

Except as specifically provided herein, and to the extent consistent with the approved Operating Budget, Mercy assumes full and sole responsibility for the condition, operation, repair, maintenance and management of the Premises and shall keep the Premises in the same or similar condition as it is on the Agreement Date and in a manner otherwise reasonably acceptable to the City. Subject to the approved Operating Budget, Mercy shall use commercially reasonable efforts to make all routine repairs and replacements, interior and exterior, foreseen and unforeseen, that are necessary to maintain the Premises at all times in a clean, safe, attractive and sanitary condition and in good order and repair for safe and sanitary residential housing in accordance with local health, building and housing codes, California Health and Safety Code 17920.10 and the applicable provisions of 24 CFR Part 35, all to the extent reasonably feasible given the financial and physical condition of the Premises as of the Agreement Date.

6.02 Unanticipated and Emergency Maintenance and Repairs.

Mercy shall perform all repairs that are necessary to avoid the suspension of necessary services to the Premises, even though such repairs were not anticipated in the Operating Budget, but only to the extent Mercy receives prior consent of the MOHCD Director. Such unanticipated necessary repairs, if approved by the MOHCD Director, shall be funded by Project Income or, if there is insufficient Project Income, by the Operating Reserve. Notwithstanding the foregoing, Mercy shall make all repairs that are immediately necessary for the preservation or protection of

the Premises or the safety of Existing Occupants or other persons in or on the Premises ("Emergency Repairs"), without MOHCD's prior approval and without limitation as to cost; provided, however, that in each such instance Mercy shall, before causing any such Emergency Repairs to be made, use commercially reasonable efforts to notify MOHCD of the emergency situation, and obtain MOHCD's Director's approval of such Emergency Repairs. Mercy's reasonable costs of any such Emergency Repairs shall be deemed an approved Project Expense, and shall be funded by Project Income or, if there is insufficient Project Income, by the Operating Reserve..

6.03 Management Fee; Management Agent

For performance of its management, maintenance and repair obligations under this Agreement, provided that no default has occurred and is continuing, Mercy shall be entitled to receive an annual asset management fee of \$17,800 and the Managing Agent shall be entitled to receive a property management fee of \$78 per unit per month, both of which shall be treated as a Project Expense and included in all operating budgets. Mercy may contract with a management agent to pay such agent the property management fee in exchange for the performance of the services or duties required in Sections 6.01 and 6.02, subject to the City's prior written approval of both the management agent and, at the City's discretion, the management contract between Mercy and the management agent, *provided, however*, that the arrangement will not relieve Mercy of responsibility for performance of those duties. Notwithstanding the foregoing, City hereby approves the Managing Agent.

6.04 Lead Based Paint

For any repair or maintenance work performed by Mercy or Managing Agent under this Agreement, Mercy agrees to comply with the regulations issued by the Secretary of HUD set

forth in 24 CFR Part 35 and all applicable rules and orders issued thereunder, to the extent practical or possible.

6.05 Limitation of Liability

(a) Mercy, on behalf of itself and its Agents and Invitees, covenants and agrees that the City shall not be responsible for or liable to Mercy for, and, to the fullest extent allowed by any Laws, Mercy hereby waives all rights against the City and releases it from, any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses"), whether direct or indirect, known or unknown, foreseen and unforeseen, arising from or related to the acts or omissions of Mercy, its Agents and Invitees.

(b) Notwithstanding the forgoing, City hereby acknowledges and agrees that Mercy's liability shall be limited to the above, and that Mercy, its Agents and Invitees shall not be liable for any Losses arising from or related to the physical or environmental condition of the Premises (except to the extent such condition is caused by the action or omission of Mercy, its Agents or Invitees).

ARTICLE 7: ACCOUNTS

7.01 General Operating Account.

Mercy shall credit to a separate account (the "General Operating Account") all Project Income, other than the security deposit payments to be deposited into the Security Deposit Account described below.

7.02 Security Deposit Account.

On or around the Agreement Date, the City shall transfer the rights to all existing security deposits to Mercy. Mercy shall deposit all security deposits collected in accordance with requirements of the Existing Occupants' rental agreements into a separate Security Deposit Account established for the benefit of the City, Mercy and Existing Occupants. Funds deposited in the Security Deposit Account may only be disbursed to pay the costs of any unpaid rent, damage, or unreasonable wear and tear caused by an Occupant, or to reimburse the General Operating Account for payment of these costs; or to return to the Occupant upon termination of his or her tenancy the portion of the security deposit not used in accordance with this Section 7.02. In collecting, handling, and disbursing these funds, Mercy shall comply with the requirements of the California Civil Code, Section 1950.5 and Business and Professions Code Section 10145, provided that Mercy shall not be liable for any security deposits that are not transferred or were not collected prior to the Agreement Date. The Security Deposit Account shall be held in a depository reasonably acceptable to the City whose deposits are insured by an agency of the federal government or other comparable federally insured program.

7.03 Reserve Accounts

Within 10 days of the Agreement Date, Mercy shall establish a segregated interest-bearing operating reserve depository account for the Premises (the "Operating Reserve"). Within 30 days after the Agreement Date, City shall deposit funds into the Operating Reserve in an amount equal to \$200,000 (the "Initial Deposit"). In the event that the Initial Deposit funds are depleted prior to City's approval of the Interim Operating Budget, the City shall deposit additional funds into the Operating Reserve in an amount deemed sufficient in City's sole discretion to ensure that any excess Project Expenses can be paid by Mercy in a timely manner. Upon City approval of the Interim Operating Budget, City shall deposit any additional funds necessary to cause the funds in

the Operating Reserve account to equal twenty-five percent (25%) of the Interim Operating Budget approved Project Expenses. On January 1, 2015, and each January 1st thereafter, City shall deposit any additional funds necessary to restore the Operating Reserve to equal twenty-five percent (25%) of the Interim Operating Budget (or, if applicable at the time, the Final Operating Budget) approved Project Expenses. At all times, Mercy may withdraw funds from the Operating Reserve solely to cover the amount by which Project Expenses exceed Project Income and to pay for any Emergency Repairs. Mercy may not withdraw funds (including any accrued interest) from the Operating Reserve for any other purpose without the City's prior written approval. Upon termination of this Agreement, any remaining funds in the Operating Reserve shall be transferred by Mercy to the City.

ARTICLE 8: TITLE TO IMPROVEMENTS

8.01 Improvements

Except for Mercy's Personal Property (as described in the next section), all appurtenances, fixtures, improvements, equipment, additions, and other property attached or affixed to or installed in the Premises at the Commencement Date or during the Term, shall be and remain City's property. Except if being replaced, Mercy may not remove any such property at any time during or after the Term unless City so requests.

8.02 Mercy's Personal Property

All furniture, trade fixtures, office equipment and articles of movable personal property installed in the Premises by or for the account of Mercy, without expense to City, and that can be removed without structural or other damage to the Premises (collectively, "Mercy's Personal Property") shall be and remain Mercy's property. Mercy may remove its Personal Property at any time during the Term. Mercy shall pay any taxes or other impositions levied or assessed upon

Mercy's Personal Property, at least ten (10) days prior to delinquency, and shall deliver satisfactory evidence of such payment to City upon request.

ARTICLE 9: ASSIGNMENT, SUBLEASE OR OTHER CONVEYANCE

9.01 Assignment, Sublease or Other Conveyance by Mercy

Mercy may not sell, assign, convey, sublease, or transfer in any other mode or form all or any part of its interest in this Agreement or in the Improvements or any portion thereof, or allow any person or entity to occupy or use all or any part of the Site, other than subleases to Existing Occupants in the ordinary course of business, or to service providers or vendors, nor may it contract or agree to do any of the same, without the prior written approval of the City, which approval shall not be unreasonably withheld or delayed.

ARTICLE 10: TAXES

Mercy agrees to pay, or cause to be paid, when due to the proper authority, any and all valid taxes, assessments and similar charges on the Site which become effective after the Effective Date of this Agreement, including all taxes levied or assessed on the possession, use or occupancy, as distinguished from the ownership, of the Site. Mercy shall not permit any such taxes, charges or other assessments to become a defaulted lien on the Site or the Improvements thereon; provided, however, that in the event any such tax, assessment or similar charge is payable in installments, Mercy may make, or cause to be made, payment in installments; and, provided further, that Mercy may contest the legal validity or the amount of any tax, assessment or similar charge, through such proceedings as Mercy considers necessary or appropriate, and Mercy may defer the payment thereof so long as the validity or amount thereof shall be contested by Mercy in good faith and without expense to the City. In the event of any such contest, Mercy shall protect, defend and indemnify the City against all loss, cost, expense or damage resulting

there from, and should Mercy be unsuccessful in any such contest, Mercy shall forthwith pay, discharge, or cause to be paid or discharged, such tax, assessment or other similar charge. The City shall furnish such information as Mercy shall reasonably request in connection with any such contest provided that such information is in City's possession, control or is otherwise available to the public. City hereby consents to and shall reasonably cooperate with and assist Mercy in applying for and obtaining any applicable exemptions from taxes or assessments levied on the Site, the Improvements or on Mercy's interest thereon.

ARTICLE 11: UTILITIES

If applicable, Mercy shall procure water and sewer service from the City and electricity, telephone, natural gas and any other utility service from the City or utility companies providing such services, and shall pay all connection and use charges imposed in connection with such services. As between the City and Mercy, Mercy shall be responsible for the installation and maintenance of all facilities required in connection with such utility services to the extent not already installed or maintained by the City or the utility providing such service.

ARTICLE 12: LIENS & ENCUMBRANCES

12.01 No Encumbrances

Notwithstanding any other provision of this Agreement and subject to the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, no mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset is permitted to be placed upon the Premises.

12.02 Liens

Mercy shall use its best efforts to keep the Site free from any liens arising out of any work performed or materials furnished by itself or its Agents. In the event that Mercy shall not cause the same to be released of record or bonded around within twenty (20) days following written notice from the City of the imposition of any such lien, the City shall have, in addition to all other remedies provided herein and by law, the right but not the obligation to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All sums paid by the City for such purpose, and all reasonable expenses incurred by it in connection therewith, shall be payable to the City by Mercy on demand; provided, however, Mercy shall have the right, upon posting of an adequate bond or other security, to contest any such lien, and the City shall not seek to satisfy or discharge any such lien unless Mercy has failed to do so within ten (10) days after the final determination of the validity thereof. In the event of any such contest, Mercy shall protect, defend, and indemnify the City against all loss, cost, expense or damage resulting therefrom.

ARTICLE 13: GENERAL REMEDIES

13.01 Application of Remedies

The provisions of this Article 13 shall govern the parties' remedies for breach of this Agreement.

13.02 Notice and Cure Rights for Mercy

The City may not exercise its remedies under this Agreement for a default by the Mercy unless and until (i) the City has given written notice of any such default, in accordance with the notice provisions herein, to Mercy, and (ii) such default has not been cured within sixty (60) days, or such longer period as may be set forth herein, following the giving of such notice or, if such default cannot be cured within such 60-day period, such longer period as is reasonably necessary

to cure such default, provided that such cure has been commenced within such 60-day period and is being prosecuted diligently to completion.

13.03 Breach by City

If Mercy believes a material breach of this Agreement has occurred, Mercy shall first notify the City in writing of the purported breach, giving the City sixty (60) days from receipt of such notice to cure such breach. In the event City does not then cure or, if the breach is not reasonably susceptible to cure within that sixty (60) day period, begin to cure within sixty (60) days and thereafter diligently prosecute such cure to completion, then Mercy shall be afforded all of its rights at law or in equity by taking any or all of the following remedies: (i) terminating in writing this entire Agreement; (ii) prosecuting an action for damages; (iii) seeking specific performance of this Agreement; or (iv) any other remedy available at law or equity.

13.04 Breach by Mercy

13.04(a) Default by Mercy

Subject to the notice and cure rights under Section 13.02, the following events each constitute a basis for the City to take action against Mercy:

- (1) Mercy fails to comply with the permitted uses and affordability restrictions set forth in Article 5;
- (2) Mercy voluntarily or involuntarily assigns, transfers or attempts to transfer or assign this Agreement or any rights in this Agreement, or in the Improvements, except as permitted by this Agreement;
- (3) Mercy, or its successor in interest, shall fail to pay real estate taxes or assessments on the Premises or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be

made, or any material supplier's or mechanic's lien or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged; provided, however, that Mercy shall have the right to contest any tax or assessment pursuant to this Agreement and, upon the posting of an adequate bond or other security, to contest any such lien or encumbrance. In the event of any such contest, Mercy shall protect, indemnify and hold City harmless against all losses and damages, including reasonable attorneys' fees and costs resulting therefrom;

(4) Mercy shall be adjudicated bankrupt or insolvent or shall make a transfer in fraud of creditors, or make an assignment for the benefit of creditors, or bring or have brought against Mercy any action or proceeding of any kind under any provision of the Federal Bankruptcy Act or under any other insolvency, bankruptcy or reorganization act and, in the event such proceedings are involuntary, Mercy is not dismissed from the same within sixty (60) days thereafter; or, a receiver is appointed for a substantial part of the assets of Mercy and such receiver is not discharged within sixty (60) days;

(5) Mercy breaches any other material provision of this Agreement;

(6) Mercy fails to pay any portion of Rent when due in accordance with the terms and provisions of this Agreement.

13.04(b) Notification and City Remedies

Upon the happening of any of the events described in Section 13.04(a) above and prior to exercising any remedies, the City shall notify Mercy in writing of the Mercy's purported breach, failure or act, subject to the cure rights in Section 13.02.

ARTICLE 14: DAMAGE AND DESTRUCTION

If the Premises is damaged by fire or other casualty, then City shall repair the same provided that funds for such repairs are appropriated by City's Board of Supervisors, in its sole discretion, for such purpose and that such repairs can be made within two hundred ten (210) days after the date of such damage (the "Repair Period"). In the event such conditions are satisfied, this Agreement shall remain in full force and effect except that Mercy shall be entitled to a proportionate reduction of Rent during the period of such repairs based upon the extent to which such damage and the making of such repairs materially interferes with Mercy's use or occupancy of the Premises. City shall use reasonable efforts to notify Mercy within ninety (90) days after the date of such damage whether or not such repairs can be made within the Repair Period, and City's determination thereof shall be binding on Mercy. If such repairs cannot be made within the Repair Period, City shall have the option to notify Mercy of: (a) City's intention to repair such damage and diligently prosecute such repairs to completion within a reasonable period after the Repair Period, subject to the Board of Supervisor's appropriation of all necessary funds, in which event this Agreement shall continue in full force and effect and the Base Rent shall be reduced as provided herein; or (b) City's election to terminate this Agreement as of a date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by City. In case of termination, the Base Rent shall be reduced as provided above, and Mercy shall pay such reduced Base Rent up to the date of termination.

Notwithstanding anything to the contrary in this Agreement, City shall have no obligation to repair the Premises in the event the damage or destruction is attributable to any act or omission of Mercy, its officers, agents, invitees or employees, in which event this Agreement shall terminate. In no event shall City be required to repair any damage to Mercy's Personal Property.

City and Mercy intend that the provisions of this Section govern fully in the event of any damage or destruction and accordingly, City and Mercy each hereby waives the provisions of Section 1932, subdivision 2, Section 1933, subdivision 4 and Sections 1941 and 1942, of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect.

ARTICLE 15: DAMAGE; HAZARDOUS MATERIALS; INDEMNIFICATION

15.01 Damage to Person or Property -General Indemnification

City shall not in any event whatsoever be liable for any injury or damage to any person happening on or about the Site, for any injury or damage to the Premises, or to any property of Mercy, or to any property of any other person, entity or association on or about the Site, unless arising from or related to: (i) the physical or environmental condition of the Premises (except to the extent such condition is caused by the action or omission of Mercy, its Agents or Invitees); or (ii) any gross negligence or willful misconduct of the City or any of its commissioners, officers, agents or employees. Mercy shall defend, hold harmless and indemnify the City and its respective commissioners, officers, agents, and employees, of and from all Losses directly or indirectly arising from its tenancy, its use of the Site, including adjoining sidewalks and streets, and any of its operations activities thereon or connected thereto; provided, however, that this Article 16 shall not be deemed or construed to and shall not impose an obligation to indemnify and save harmless the City or any of its commissioners, officers, agents or employees from any Losses arising from or in any way related to or connected with : (i) the physical or environmental condition of the Premises (except to the extent such condition is caused by the action or omission of Mercy, its Agents or Invitees); or (ii) any gross negligence or willful misconduct of the City or any of its commissioners, officers, agents or employees.

City shall defend, hold harmless and indemnify Mercy and its officers, agents, and employees, of and from all Losses arising from or related to: (i) the physical or environmental condition of the Premises (except to the extent such condition is caused by the action or omission of Mercy, its Agents or Invitees); or (ii) any gross negligence or willful misconduct of the City or any of its commissioners, officers, agents or employees.

15.02 Hazardous Materials

(a) Mercy covenants and agrees that it shall not, and shall take commercially reasonable efforts to ensure that Mercy's Agents and Invitees do not, cause or permit any Hazardous Substance to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises in violation of Environmental Laws (as defined herein) without the prior written approval of the City.

(b) Mercy shall not, and Mercy shall use commercially reasonable efforts to ensure that Mercy's Agents and Invitees do not, cause any Release (as defined herein) of Hazardous Substances in, on, under or about the Premises.

(c) Mercy shall indemnify, defend, and hold the City, and its commissioners, officers, agents and employees (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") harmless from and against any and all losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to Mercy's violation of any Environmental Law, or any Release, threatened Release and any condition or Hazardous Substance related nuisance on, under or from the Site., except to the extent it arises from the existing condition of the Premises as of the Agreement Date or any gross

negligence or willful misconduct of the City or any of its commissioners, officers, agents or employees.

(d) For purposes of this Section 15.02, the following definitions shall apply:

(i) "Hazardous Substance" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. 9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code Section 25316 and Section 25281(d), all chemicals listed pursuant to the California Health & Safety Code 25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances which occur naturally on the Site or that which are reasonably and customarily used in the operation and maintenance of a multifamily housing development.

(ii) "Environmental Law" shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(iii) "Release" shall mean any spillage, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance.

ARTICLE 16: INSURANCE

16.01 Insurance

During the term of this Agreement, Mercy shall procure and maintain insurance as follows:

- (1) Insurance Services Office Commercial General Liability coverage (form CG 00 01 – “Occurrence”) or other form approved by the City’s Risk Manager.
- (2) Insurance Services Office Automobile Liability coverage, code 1 (form CA 00 01 – “Any Auto”) or other form approved by the City’s Risk Manager.
- (3) Workers' Compensation Insurance as required by the State of California and Employer’s Liability insurance.
- (4) Crime Policy or Fidelity Bond covering the Borrower’s officers and employees against dishonesty with respect to the use of City funds.

16.02 Minimum Limits of Insurance

Mercy shall maintain limits no less than:

- (1) General Liability: Commercial General Liability insurance with no less than One Million Dollars (\$1,000,000) combined single limit per occurrence and Two Million Dollars (\$2,000,000) annual aggregate limit for bodily injury and property damage, including coverage for contractual liability; personal injury; fire damage legal liability; advertisers’ liability; owners’ and contractors’ protective liability; products and completed operations; broad form property damage; and explosion, collapse and underground (XCU) coverage during any period in which Mercy is conducting any activity on, alteration or improvement to the Site with risk of explosion, collapse, or underground hazards.

(2) Automobile Liability: Business Automobile Liability insurance with no less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable.

(3) Workers' Compensation: Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(4) Crime Policy or Fidelity Bond: Crime Policy or Fidelity Bond of no less than Seventy Five Thousand Dollars (\$75,000) each loss, with any deductible not to exceed Five Thousand Dollars (\$5,000) each loss.

16.03 Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions in excess of \$25,000 must be declared to and approved by City's Risk Manager. At the option of City's Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Mercy shall procure a financial guarantee satisfactory to the City's Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

16.04 Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

(1) General Liability and Automobile Liability Coverage:

(a) The "City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees", are to be covered as additional insured with respect to: liability arising out of activities performed by or on behalf of the Mercy

related to the Project; products and completed operations of the Mercy, premises owned, occupied or used by the Mercy related to the Project; and automobiles owned, leased, hired or borrowed by Mercy for the operations related to the Premises. The coverage shall contain no special limitations on the scope of protection afforded to the City and its Commissioners, members, officers, agents or employees.

(2) Workers' Compensation and Property Insurance: The insured shall agree to waive all rights of subrogation against the "City and County of San Francisco, and its respective commissioners, members, officers, agents, and employees" for any losses in connection with this Project.

(3) Claims-made Coverage: Should any of the required insurance be provided under a claims-made form, Mercy shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(4) All Coverage: Each insurance policy required by this Article shall:

(a) Be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to City, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

(b) Contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(c) For any claims related to this Agreement, Mercy's insurance coverage shall be primary insurance with respect to the City and its commissioners, members, officers, agents, and employees. Any insurance or self-insurance maintained by the City or its commissioners, members, officers, agents, or employees shall be in excess of the Mercy's insurance and shall not contribute with it.

(d) Mercy's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(e) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City and its commissioners, members, officers, agents, or employees.

(f) Approval of Mercy's insurance by the City will not relieve or decrease the liability of Mercy under this Agreement.

(g) The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase, unless Mercy demonstrates to the City's satisfaction that the increased coverage is commercially unreasonable and unavailable to Mercy.

16.05 Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VIII or as otherwise approved by the City's Risk Manager.

16.06 Verification of Coverage

Mercy shall furnish City with certificates of insurance and with original endorsements effecting coverage required by this clause at the commencement of this Agreement and annually thereafter. The certificates and endorsements for each insurance policy are to be

signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements demonstrating the coverage required by these specifications at any time.

16.07 Subcontractors

Mercy shall include all subcontractors and consultants as additional insureds under its policies or shall furnish separate certificates and endorsements for each. Mercy shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Mercy as additional insureds. All coverage for subcontractors and consultants shall be subject to all of the requirements stated herein unless otherwise approved by the City's Risk Manager.

ARTICLE 17: COMPLIANCE WITH SITE-RELATED AND LEGAL REQUIREMENTS

17.01 Compliance with Legal Requirements

Except as applicable to the existing condition of the Premises as of the Agreement Date, Mercy shall comply with all Laws, statutes, ordinances and governmental rules, regulations or requirements now in force or which may hereafter be in force, with the requirements of any board of fire underwriters or other similar body now or hereafter constituted, with any direction or occupancy certificate issued pursuant to any law by any public officer or officers, insofar as any thereof relates to or affects the condition, use or occupancy of the Site. In the event Mercy contests any of the foregoing, Mercy shall not be obligated to comply therewith to the extent that the application of the contested law, statute, ordinance, rule, regulation or requirement is stayed by the operation of law or administrative or judicial order.

17.02 Regulatory Approvals

Mercy understands and agrees that the City is entering into this Agreement in its capacity as a landowner with a proprietary interest in the Premises and not as a regulatory agency with certain police powers. Mercy understands and agrees that neither entry by the City into this Agreement nor any approvals given by the City under this Agreement will be deemed to imply that Mercy will obtain any required approvals from City departments, boards or commissions that have jurisdiction over the Premises.

ARTICLE 18: ENTRY

(a) The City reserves for itself and its authorized representatives the right to enter the Premises at all reasonable times during normal business hours upon not less than forty-eight (48) hours' written notice to Mercy (except in the event of an emergency), subject to the rights of the Existing Occupants and others lawfully permitted on the Property, for any of the following purposes:

(i) to determine whether the Premises is in good condition and to inspect the Premises;

(ii) to determine whether Mercy is in compliance with its Agreement obligations and to cure or attempt to cure any Mercy default;

(iii) to serve, post or keep posted any notices required or allowed under any of the provisions of this Agreement; and

(iv) to do any maintenance or repairs to the Premises that the City has the right or the obligation, if any, to perform hereunder

(b) In the event of any emergency, as reasonably determined by the City, at its sole option and without notice, the City may enter the Premises and alter or remove any Improvements or Mercy's personal property on or about the Premises as reasonably necessary, given the nature of

the emergency. The City will have the right to use any and all means the City considers appropriate to gain access to any portion of the Premises in an emergency, in which case, the City will not be responsible for the replacement of any property, and no emergency entry may be deemed to be a forcible or unlawful entry onto or a detainer of the Premises, or an eviction, actual or constructive, of Mercy from the Premises or any portion thereof.

(c) The City will not be liable in any manner for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of the City's entry onto the Premises, except to the extent damage arises out of the gross negligence or willful misconduct of the City or its agents. The City will be responsible for any losses resulting from its gross negligence or willful misconduct and will repair any resulting damage promptly.

(d) Mercy will not be entitled to any abatement in Rent if the City exercises any rights reserved in this Section, subject to subsection (c) above.

(e) The City will use its reasonable good faith efforts to conduct any activities on the Premises allowed under this Section in a manner that, to the extent practicable, will minimize any disruption to Mercy's use hereunder.

ARTICLE 19: CONDEMNATION AND TAKINGS

19.01 Parties' Rights and Obligations to be Governed by Agreement

If, during the term of this Agreement, there is any condemnation of all or any part of the Site is taken by condemnation, the rights and obligations of the parties shall be determined pursuant to this Article 19.

19.02 Total Taking

If the Site is totally taken by condemnation, this Agreement shall terminate on the date the condemnor has the right to possession of the Site.

19.03 Partial Taking

If any portion of the Site is taken by condemnation, this Agreement shall remain in effect, except that Mercy may elect to terminate this Agreement if, in Mercy's reasonable judgment, the remaining portion of the Improvements is rendered unsuitable for Mercy's continued use of the Site. If Mercy elects to terminate this Agreement, Mercy must exercise its right to terminate pursuant to this paragraph by giving notice to the City within thirty (30) days after the City notifies Mercy of the nature and the extent of the taking. If Mercy elects to terminate this Agreement as provided in this Section 19.03, Mercy also shall notify the City of the date of termination, which date shall not be earlier than thirty (30) days nor later than six (6) months after Mercy has notified the City of its election to terminate; except that this Agreement shall terminate on the date the condemnor has the right to possession of the Site if such date falls on a date before the date of termination as designated by Mercy. If Mercy does not terminate this Agreement within such thirty (30) day notice period, this Agreement shall continue in full force and effect.

19.04 Effect on Rent

If any portion of the Improvements is taken by condemnation and this Agreement remains in full force and effect, then on the date of taking the rent shall be reduced by an amount that is in the same ratio to the rent as the value of the area of the portion of the Improvements taken bears to the total value of the Improvements immediately before the date of the taking.

19.05 Award and Distribution

Any compensation awarded, paid or received on a total or partial condemnation of the Site or threat of condemnation of the Site shall belong to and be distributed in the following order:

(a) First, to pay the balance due on any outstanding or unpaid obligations and/or liabilities, including but not limited to, trade accounts, taxes, payroll accruals and residuals, to the extent provided therein; and

(b) Second, to the City.

ARTICLE 20: QUITCLAIM

Upon expiration or sooner termination of this Agreement, Mercy shall surrender the Site to the City and, at the City's request, shall execute, acknowledge, and deliver to the City a good and sufficient quitclaim deed with respect to any interest of Mercy in the Site.

ARTICLE 21: EQUAL OPPORTUNITY

In the selection of all contractors and professional consultants for any work on the Premises, Mercy must comply with the City's procurement requirements and procedures as described in the MOHCD Contracting Manual and with the requirements of Chapter 14B of the San Francisco Administrative Code ("LBE Ordinance") according to the procedures established by the City's Human Rights Commission. The Site is subject to the requirements of Section 3 of the Housing and Community Development Act of 1968 and of the San Francisco Section 3 program. Federal Section 3 requirements state that contracts and opportunities for job training and employment be given, to the greatest extent feasible, to local low-income residents. Local residents for the purposes of this Agreement are San Francisco residents. In addition, any work on the Site will be required to comply with hiring requirements as incorporated into the local Section 3 program and in conjunction with the City's low-income hiring requirements pursuant to San Francisco's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83). The goals for hiring of Section 3-eligible workers on the project will be 30% of new hires, moving towards a goal of 30% of total work hours.

ARTICLE 22: NO PERSONAL LIABILITY

No commissioner, official, or employee of the City shall be personally liable to Mercy or any successor in interest in the event of any default or breach by the City or for any amount which may become due to Mercy or its successors or on any obligations under the terms of this Agreement.

ARTICLE 23: INTENTIONALLY OMITTED

ARTICLE 24: WAIVER

The waiver by the City or Mercy of any term, covenant, agreement or condition herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, agreement or condition herein contained, nor shall any custom or practice which may grow up between the parties in the administration of the terms hereof be construed to waive or to lessen the right of the City or Mercy to insist upon the performance by the other in strict accordance with the said terms. The subsequent acceptance of rent or any other sum of money hereunder by the City shall not be deemed to be a waiver of any preceding breach by Mercy of any term, covenant, agreement or condition of this Agreement, other than the failure of Mercy to pay the particular rent or other sum so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent or other sum.

ARTICLE 25: RECORDS

Upon reasonable notice during normal business hours, and as often as the City may deem necessary, there shall be made available to the City and its authorized representatives for examination all records, reports, data and information made or kept by Mercy regarding its activities or operations on the Site. Nothing contained herein shall entitle the City to inspect personal histories of residents or lists of donors or supporters. To the extent that it is permitted by

law to do so, the City will respect the confidentiality requirements of Mercy in regard to the lists furnished by Mercy pursuant to this Agreement, of the names of occupants of the Site.

ARTICLE 26: NOTICES AND CONSENTS

All notices, demands, consents or approvals which may be or are required to be given by either party to the other hereunder shall be in writing and shall be deemed to have been fully given when delivered in person to such representatives of Mercy and the City as shall from time to time be designated by the parties for the receipt of notices, or when deposited in the United States mail, certified, postage prepaid, or by express delivery service with a delivery receipt and addressed

if to Mercy at: Mercy Midtown Inc.
 1360 Mission Street, Suite 300
 San Francisco, CA 94103
 Attn: President

if to City at: Mayor's Office of Housing & Community Development
 One South Van Ness Ave, 5th Floor
 San Francisco, California 94103
 Attn: Director

or to such other address with respect to either party as that party may from time to time designate by notice to the other given pursuant to the provisions of this Article 26. Any notice given pursuant to this Article 26 shall be effective on the date of delivery or the date delivery is refused as shown on the delivery receipt.

ARTICLE 27: COMPLETE AGREEMENT

There are no oral agreements between Mercy and the City affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements,

agreements and understandings between Mercy and the City with respect to the Agreement of the Site.

ARTICLE 28: HEADINGS

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

"Paragraph" and "section" may be used interchangeably.

ARTICLE 29: SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the City and Mercy and where the term "Mercy" or "City" is used in this Agreement, it shall mean and include their respective successors and assigns; provided, however, that the City shall have no obligation under this Agreement to, nor shall any benefit of this Agreement accrue to, any unapproved successor or assign of Mercy where City approval of a successor or assign is required by this Agreement. At such time as City sells the Site to any third party, City shall require such third party to assume all of City's obligations hereunder arising on and after the transfer in writing for the benefit of Mercy and its successors and assigns.

ARTICLE 30: TIME

Time is of the essence in the enforcement of the terms and conditions of this Agreement.

ARTICLE 31: PARTIAL INVALIDITY

If any provisions of this Agreement shall be determined to be illegal or unenforceable, such determination shall not affect any other provision of this Agreement and all such other provisions shall remain in full force and effect.

ARTICLE 32: APPLICABLE LAW

This Agreement shall be governed by and construed pursuant to the laws of the State of California.

ARTICLE 33: ATTORNEYS' FEES

If either of the parties hereto commences a lawsuit to enforce any of the terms of this Agreement, the prevailing party will have the right to recover its reasonable attorneys' fees and costs of suit, including fees and costs on appeal, from the other party.

ARTICLE 34: EXECUTION IN COUNTERPARTS

This Agreement and any memorandum hereof may be executed in counterparts, each of which shall be considered an original, and all of which shall constitute one and the same instrument.

ARTICLE 35: AUTHORITY

Mercy hereby represents and warrants that it is a California nonprofit public benefit corporation and has full rights, power and authority to enter into and perform its obligations under this Agreement.

ARTICLE 36: CITY PROVISIONS

36.1 Non-Discrimination

(a) Covenant Not to Discriminate. In the performance of this Agreement, Mercy covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Mercy, in any of Mercy's operations within the United

States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Mercy.

(b) Subleases and Other Subcontracts. Mercy shall include in all subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such sublease or other subcontractor in substantially the form of Subsection (a) above. In addition, Mercy shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subleases and other subcontractors to comply with such provisions. Mercy's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Mercy does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Agreement elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "Core Benefits"), as well as any benefits other than Core Benefits, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) Condition to Agreement. As a condition to this Agreement, Mercy shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form

HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by Parties contracting for the Agreement of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Mercy shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Mercy understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Mercy and/or deducted from any payments due Mercy.

36.2 MacBride Principles – Northern Ireland. The City and County of San Francisco 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. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Mercy acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

36.3 Conflicts of Interest. Mercy states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the 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, certifies that it knows of no facts which would

constitute a violation of such provisions and agrees that if Mercy becomes aware of any such fact during the term of this Agreement Mercy shall immediately notify the City. Mercy further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Mercy believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Mercy to make such disclosure, if any, shall constitute grounds for City's termination and cancellation of this Agreement.

36.4 Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City and County of San Francisco. Accordingly, Mercy acknowledges and agrees that no officer or employee of the City has authority to commit the City to this Agreement unless and until an resolution of the City's Board of Supervisors has been duly enacted approving this Agreement. Therefore, any obligations or liabilities of the City under this Agreement are contingent upon enactment of a resolution, and this Agreement will be null and void unless the City's Mayor and the Board of Supervisors approve this Agreement, in their respective sole and absolute discretion, and in accordance with all applicable Laws. Approval of this Agreement by any City department, commission or agency may not be deemed to imply that a resolution will be enacted or create any binding obligations on the City.

36.5 Tropical Hardwood/Virgin Redwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, the City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product. Except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Mercy shall not use any items in the rehabilitation, development or operation of the Premises or otherwise in the

performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products.

36.6 Tobacco Product Advertising Ban. Mercy acknowledges and agrees that no advertising of cigarettes or tobacco products may be allowed on the Premises. The foregoing prohibition will include the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, or on any sign. The foregoing prohibition will not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

36.7 Pesticide Ordinance. Mercy shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Mercy to submit to the City's Department of the Environment an integrated pest management ("IPM") plan that (A) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Mercy may need to apply to the Premises during the Term of this Agreement, (b) describes the steps Mercy will take to meet the City's IPM Policy described in Section 39.1 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Mercy's primary IPM contact person with City. In addition, Mercy shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Nothing herein shall prevent Mercy, acting through the City, from seeking a determination from the City's Commission on the

Environment that Mercy is exempt from complying with certain portions of the Pesticide Ordinance as provided in Section 307 thereof.

36.8 Compliance with City's Sunshine Ordinance. Mercy 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. Mercy hereby authorizes the City to disclose any records, information and materials submitted to the City in connection with this Agreement as required by Law. Further, Mercy specifically agrees to conduct any meeting of its governing board that addresses any matter relating to the Project or to Mercy's performance under this Agreement as a passive meeting.

36.9 Notification of Limitations on Contributions. Through its execution of this Agreement, Mercy 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 any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three (3) months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves.

36.10 Requiring Health Benefits for Covered Employees. Unless exempt, Mercy agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (the "HCAO"), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be

amended from time to time. The provisions of Chapter 12Q are incorporated in this Agreement by reference and made a part of this Agreement as though fully set forth. The text of the HCAO is available on the web at www.sfgov.org/oca/lwlh.htm. Capitalized terms used in this Section and not defined in this Agreement have the meanings assigned to them in Chapter 12Q.

Notwithstanding this requirement, City recognizes that the residential housing component of the Improvements is not subject to the HCAO.

(a) For each Covered Employee, Mercy must provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Mercy chooses to offer the health plan option, the health plan must meet the minimum standards set forth by the San Francisco Health Commission.

(b) If Mercy is a small business as defined in Section 12Q.3(d) of the HCAO, Mercy will have no obligation to comply with Subsection (a) above.

(c) Mercy's failure to comply with the HCAO will constitute a material breach of this Agreement. If Mercy fails to cure its breach within thirty (30) days after receiving the City's written notice of a breach of this Agreement for violating the HCAO or, if the breach cannot reasonably be cured within the 30-day period, Mercy fails to commence efforts to cure within the 30-day period, or thereafter fails diligently to pursue the cure to completion, the City will have the right to pursue the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies will be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any sublease entered into by Mercy for commercial space in the Project must require the sublease to comply with the requirements of the HCAO and must contain contractual obligations substantially the same as those set forth in this Section. Mercy must

notify the City's Purchasing Department when Mercy enters into a sublease and must certify to the Purchasing Department that Mercy has notified the sublessee of the obligations under the HCAO and has imposed the requirements of the HCAO on sublessee through the sublease. Mercy will be responsible for its sublessee's compliance with this Chapter. If a sublessee fails to comply, the City may pursue the remedies set forth in this Section against Mercy based on the sublessee's failure to comply, provided that City has first provided Mercy with notice and an opportunity to obtain a cure of the violation.

(e) Mercy may not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the City with regard to Mercy's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Mercy represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) Mercy must keep itself informed of the current requirements of the HCAO.

(h) Mercy must provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subleases, as applicable.

(i) Mercy must provide City with access to records pertaining to compliance with HCAO after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

(j) The City may conduct random audits of Mercy to ascertain its compliance with HCAO. Mercy agrees to cooperate with the City when it conducts audits.

(k) If Mercy is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Mercy later enters into an agreement or agreements that cause Mercy's aggregate amount of all agreements with the City to reach \$75,000, all the agreements will be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Mercy and MOH to be equal to or greater than \$75,000 in the fiscal year.

36.11 Public Access to Meetings and Records. If Mercy receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Mercy shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, Mercy agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. Mercy 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. Mercy acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. Mercy further acknowledges that such material breach of the Agreement shall be grounds for City to terminate and/or not renew this Agreement, partially or in its entirety.

36.12 Resource-Efficient Building Ordinance. Mercy acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Chapter 7 relating to resource-efficient City buildings and resource-efficient pilot projects. Mercy hereby agrees it shall comply with the applicable provisions of such code sections as such sections may apply to the Premises.

36.13 Drug Free Work Place. Mercy acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City premises. Mercy agrees that any violation of this prohibition by Mercy, its Agents or assigns shall be deemed a material breach of this Agreement.

36.14 Preservative Treated Wood Containing Arsenic. Mercy may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Mercy may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Mercy from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

36.15 Nondisclosure of Private Information. Mercy agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in

the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Mercy nor any of its subcontractors shall disclose Private Information, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) Mercy received advance written approval from the Contracting Department to disclose the information; or
 - (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (d) Any failure of Mercy to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, City may terminate this Agreement, debar Mercy, or bring a false claim action against Mercy.

36.16 Graffiti. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the

law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Mercy shall remove all graffiti from the Premises and any real property owned or leased by Mercy in the City and County of San Francisco within forty eight (48) hours of the earlier of Mercy's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Mercy to breach any Agreement or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction Premises, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of

Mercy to comply with this section of this Agreement shall constitute an event of default of this Agreement.

36.17 Incorporation. Each and every provision of the San Francisco Administrative Code described or referenced in this Agreement is hereby incorporated by reference as though fully set forth herein. Failure of Mercy to comply with any provision of this Agreement relating to any such code provision shall be governed by Article 19 of this Agreement, unless (i) such failure is otherwise specifically addressed in this Agreement or (ii) such failure is specifically addressed by the applicable code section.

36.18 Food Service Waste Reduction. Mercy agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in the San Francisco Environment Code, Chapter 16, including the remedies provided therein, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. This provision is a material term of this Agreement. By entering into this Agreement, Mercy agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine. Without limiting City's other rights and remedies, Mercy agrees that the sum of One Hundred Dollars (\$100.00) liquidated damages for the first breach, Two Hundred Dollars (\$200.00) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Mercy's failure to comply with this provision.

ATTACHMENT 1

Legal Description of the Site

All that certain real property located in the City and County of San Francisco, State of California, described as follows:

IN WITNESS WHEREOF, Mercy and the City have executed this Agreement as of the
day and year first above written.

MERCY:

MERCY MIDTOWN INC,
a California nonprofit public benefit corporation

By: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Director of Real Estate

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Evan Gross
Deputy City Attorney

IN WITNESS WHEREOF, Mercy and the City have executed this Agreement as of the
day and year first above written.

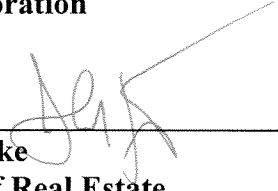
MERCY:

MERCY MIDTOWN INC,
a California nonprofit public benefit corporation

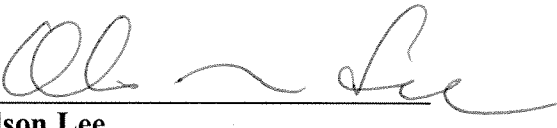
By: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 

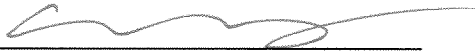
John Updike
Director of Real Estate

By: 

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 

Evan Gross
Deputy City Attorney

IN WITNESS WHEREOF, Mercy and the City have executed this Agreement as of the
day and year first above written.

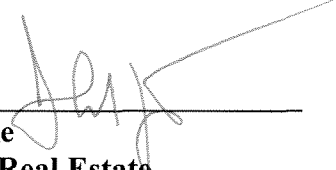
MERCY:

MERCY MIDTOWN INC,
a California nonprofit public benefit corporation

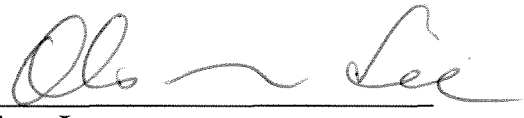
By: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 

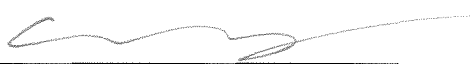
John Updike
Director of Real Estate

By: 

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 

Evan Gross
Deputy City Attorney

IN WITNESS WHEREOF, Mercy and the City have executed this Agreement as of the
day and year first above written.

MERCY:

MERCY MIDTOWN INC,
a California nonprofit public benefit corporation

By: *Therese Agostino*
Its: PRESIDENT

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____
John Updike
Director of Real Estate

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: _____
Evan Gross
Deputy City Attorney

IN WITNESS WHEREOF, Mercy and the City have executed this Agreement as of the
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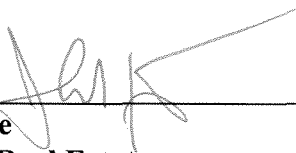
MERCY:

MERCY MIDTOWN INC,
a California nonprofit public benefit corporation

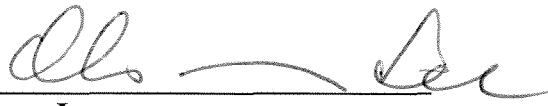
By: _____
Its: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 

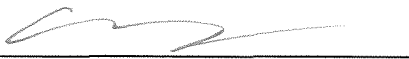
John Updike
Director of Real Estate

By: 

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

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By: 

Evan Gross
Deputy City Attorney

