

ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT
(Midtown Apartments)

THIS ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT (the "Agreement") is dated January 11, 2020 or upon full execution of this Agreement, whichever is later, (the "Effective Date"), and is made by and among the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, represented by the Mayor, acting by and through the Mayor's Office of Housing and Community Development ("City" and "Owner"), MERCY MIDTOWN INC., a California nonprofit public benefit corporation ("Assignor"), and KALCO PROPERTIES, INC., and its subsidiary Midtown Park Apartments-Kalco Properties LLC, a California limited liability company ("Assignee"). City, Assignor and Assignee are collectively referred to as the "Parties" to this Agreement.

RECITALS

A. City and Assignor are parties to that certain Management and Lease Agreement dated as of January 31, 2014, as amended by (i) an Amendment to Management and Lease Agreement dated as of May 1, 2014; (ii) a Second Amendment to Management & Lease Agreement dated as of March 27, 2015; (iii) a Third Amendment to the Management & Lease Agreement dated as of November 17, 2016; (iv) a Fourth Amendment to Management & Lease Agreement dated as of November 16, 2017; and (v) a Fifth Amendment to Management & Lease Agreement dated as of September 17, 2018 (collectively, the "Lease"), pursuant to which Assignor leases and manages the Premises. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease. The Lease is incorporated herein by reference as though full set forth herein and is part of this Agreement, except as amended by Exhibit A hereto.

B. Assignor, with the consent of the City, will assign to Assignee and Assignee will accept the assignment from Assignor of all of Assignor's rights, title, interest and obligations with respect to the Lease subject to Exhibit A hereto which is incorporated herein by reference as though fully set forth. In the event of a conflict between Exhibit A and the Lease, Exhibit A shall govern in all respects. It is the intent of the Parties that the terms of Exhibit A shall and will be incorporated into any further amendment to the Lease and/or any new management agreement entered into between Assignee and the City without the need for further negotiation. Following the assignment of the Lease from Assignor to Assignee, the City desires to release Assignor from all obligations in connection with the Lease. Assignee does not for any purpose release Assignor or the City of or from any conduct predating the Effective Date of this Agreement which may or may not give rise to past, present or future Claims as defined below.

NOW, THEREFORE, in consideration of the mutual benefits accruing to the Parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Assignment by Assignor. Subject to this Agreement and Exhibit A hereto, Assignor hereby assigns to the Assignee all of Assignor's respective rights, title, interest and obligations under the Lease.

2. Acceptance of Assignment. Subject to this Agreement and Exhibit A hereto, Assignee hereby accepts the above assignment and hereby assumes all of the rights, title, interest and obligations of Assignor under the Lease to the extent applicable to Assignee who is not a developer and is assuming only management duties related to the Project. Any reference to Assignor in the Lease described above shall be deemed a reference to the Assignee.

3. Release of Assignor and Assignee. The City hereby releases Assignor from all obligations imposed under the Lease. The City and Assignor hereby release Assignee from any and all past, present and/or future Claims, as defined below and/or lawsuits of any kind, involving the conduct, obligations, and/or duties of Assignor arising at any time under the Lease. Assignee does not for any purpose release Assignor or the City of or from any conduct predating the Effective Date of this Agreement which may or may not give rise to past, present or future Claims as defined below. Except for the gross negligence or willful misconduct of Assignee, City hereby releases Assignee of any from any Claims, as defined below, arising on or after the Effective Date of this Agreement.

4. Payment of Obligations. Assignee and City agree that, as of the Effective Date, assuming adequate funding by the City, all amounts necessary to manage and operate the Project shall be paid by the Assignee on behalf of the City. The City acknowledges that Assignee shall not be required to fund either the Reserve Account, the Operating Account or pay any other amounts in advance on behalf of the City in connection with the Project, and the City agrees to provide adequate funds to manage, pay accounts payables, and operate the Project, as needed, in all respects and is and shall be solely responsible therefore. The City further agrees to defend, indemnify and hold Assignee harmless of and from any and all adverse consequences arising out of the failure of the City to adequately fund accounts in order for Assignee to manage and operate the Project including in emergency situations.

5. Consent to Assignment. The City hereby consents to the assignment of the Lease, subject to the terms of this Assignment including Exhibit A hereto, from Assignor to Assignee, and Assignor and the City hereby represent and acknowledge to Assignee, who relies upon same in entering into this Agreement, that as of the date hereof, no default has occurred under the Lease, and no event or circumstance exists which, with the giving of notice or the passage of time, or both, would constitute a default under the Lease.

6. Indemnification. As more particularly set forth in Exhibit A, the City hereby agrees that it shall indemnify, indemnify, protect and hold Assignor and Assignee harmless from and against any and all past, present or future liabilities, claims, actions, causes of action, demands, administrative proceedings, litigation, losses, costs, damages and expenses of any kind (including, without limitation, attorneys' fees and costs and court costs incurred in third party disputes and/or intraparty disputes) ("Claims") asserted against, incurred or suffered by Assignee relating to any of the City or Assignor's duties, obligations, and/or conduct in connection with the Project, intentional or unintentional, known or unknown, including all facts and

circumstances associated therewith, and all events or Claims of any kind related to the Project, existing lawsuits, the Lease and/or the duties and obligations of the City and/or Assignor with respect to the Lease, the Premises and occupants of the Project, and all other conduct of the City or Assignor on its behalf, or on behalf of the City, at any time. The City hereby agrees that it shall indemnify, defend, protect and hold Assignor and Assignee harmless from and against any and all Claims arising as of the Effective Date arising out of the work and obligations to be performed by Assignee on or after the date hereof which indemnification shall apply in all respects other than in the event of the sole negligence, gross negligence or willful misconduct of Assignee which conduct is the sole cause of the Claims.

7. Representations. Assignor hereby represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred any of its rights under the Lease.

8. Effective Date. The assignment, assumption and amendment set forth above shall be effective as of the Effective Date.

9. Counterparts. This Agreement may be signed by different Parties hereto in counterparts with the same effect as if the signatures to each counterpart were upon a single instrument. All counterparts shall be deemed an original of this Agreement.

[remainder of page left intentionally blank]

[signatures on following pages]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day first above written.


ASSIGNOR:

Mercy Midtown, Inc.
a California nonprofit public benefit corporation

By: 
Barbara Guasco, Vice President

ASSIGNEE:


Kalco Properties, Inc.
Midtown Park Apartments - KALCO properties LLC


By: Barry Levy
Its: President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Andrico Penick 12/21/19
Its: Director of Property

By: 
Dan Adams
Acting Director, Mayor's Office of Housing
and Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Deputy City Attorney