

File No. 241207

Committee Item No. 3

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Jan 27, 2025

Board of Supervisors Meeting

Date \_\_\_\_\_

#### Cmte Board

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | Memorandum of Understanding (MOU)            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
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Completed by: Victor Young Date Jan 23, 2025

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

[Midtown Park Apartments - 1415 Scott Street - Exempting Midtown Park Apartments from Certain Construction Contracting Requirements]

**Ordinance exempting Midtown Park Apartments, located at 1415 Scott Street, from construction contracting requirements in Administrative Code, Chapter 6, but requiring compliance with the prevailing wage and apprenticeship requirements of Administrative Code, Section 23.61; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.**

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
**Additions to Codes** are in *single-underline italics Times New Roman font*.  
**Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
**Board amendment additions** are in double-underlined Arial font.  
**Board amendment deletions** are in ~~strikethrough Arial font~~.  
**Asterisks (\* \* \* \*)** indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. CEQA and Land Use Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 241207 and is incorporated herein by reference. The Board affirms this determination.

(b) On September 13, 2024, the Planning Department determined that the actions contemplated in this ordinance are consistent, on balance, with the City's General Plan and eight priority policies of Planning Code Section 101.1. The Board adopts this determination

1 as its own. A copy of said determination is on file with the Clerk of the Board of Supervisors in  
2 File No. 241207, and is incorporated herein by reference.

3  
4 Section 2. Background and General Findings.

5 (a) The mission of the Mayor's Office of Housing and Community Development  
6 ("MOHCD") is to coordinate the City's housing policy; provide financing for the development,  
7 rehabilitation, and purchase of affordable housing in San Francisco; and strengthen the social,  
8 physical, and economic infrastructure of San Francisco's low-income neighborhoods and  
9 communities in need.

10 (b) On December 30, 1968, the United States Department of Housing and Urban  
11 Development transferred to the City the Midtown Park Apartments (the "Property"), which is a  
12 140-unit residential housing development located at 1415 Scott Street (Assessor's Parcel  
13 Block No. 1099, Lot 31) in the Western Addition neighborhood, to provide housing for families  
14 displaced by urban renewal policies.

15 (c) On January 31, 2014, the City entered into a month-to-month Management and  
16 Lease Agreement with Mercy Midtown Inc. ("Mercy"), as subsequently amended on May 1,  
17 2014, March 27, 2015, November 17, 2016, November 16, 2017, and September 17, 2018  
18 (collectively, the "Lease") to operate, maintain, and manage the Property as a residential  
19 housing development, including completing necessary repairs and changes requested by the  
20 City. A copy of the Lease is on file with the Clerk of the Board of Supervisors in File No.  
21 241207. In addition to assuming obligations under the Lease, Mercy intended to reconstruct  
22 the Property and develop additional affordable housing.

23 (d) On January 1, 2020, Kalco Properties, Inc. ("Kalco") assumed Mercy's obligations  
24 under the Lease related to the operations, maintenance, and management of the Property.  
25 The Civil Service Commission approved property management services to be provided by

1 Kalco or its agents at the Property for a period of five years, pursuant to PSC #49538-20/21,  
2 and construction management services to be provided by Kalco or its agents at the Property  
3 for a period of five (5) years, pursuant to PSC #DPHRPSC004683 v 0.01, copies of which are  
4 on file with the Clerk of the Board of Supervisors in File No. 241207.

5 (e) Studies are being undertaken to determine structural ownership options and the  
6 best use of limited MOHCD funds to support the Property as a residential development. No  
7 redevelopment of the Property will occur until such studies are completed and a  
8 recommendation has been made.

9 (f) Tenant rents at the Property do not fully cover the Property's operating costs, and  
10 since June 2015, the City has provided operating subsidies to the Property to cover significant  
11 operating deficits.

12 (g) Critical urgent repairs and capital improvements are needed at the Property,  
13 including replacement of heating and hot water systems, City-required soft story upgrades,  
14 roof and window replacement, and fire safety system upgrades. MOHCD desires for Kalco to  
15 complete these critical urgent repairs and capital improvements at the Property for the safety  
16 of the residents and prior to any future redevelopment of the Property. MOHCD and Kalco  
17 desire to enter into a separate agreement regarding such critical urgent repairs and capital  
18 improvements at the Property, which may be subject to the prior approval of the Board of  
19 Supervisors, as required by Charter Section 9.118.

20  
21 Section 3. Administrative Code, Chapter 6 Waiver; Prevailing Wage and  
22 Apprenticeship Requirements.

23 (a) The Board of Supervisors waives Administrative Code, Chapter 6, to the extent  
24 Chapter 6 would otherwise be applicable to the work performed by Kalco or its agents at the  
25 Property.



(b) The payment of prevailing wages and the apprenticeship requirements of Administrative Code, Section 23.61 shall apply to the work performed by Kalco or its agents at the Property.

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:  
DAVID CHIU, City Attorney

By: /s/  
JESSICA ALFARO-CASSELLA  
Deputy City Attorney

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## **LEGISLATIVE DIGEST**

[Midtown Park Apartments - 1415 Scott Street - Exempting Midtown Park Apartments from Certain Construction Contracting Requirements]

**Ordinance exempting Midtown Park Apartments, located at 1415 Scott Street, from construction contracting requirements in Administrative Code, Chapter 6, but requiring compliance with the prevailing wage and apprenticeship requirements of Administrative Code, Section 23.61; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1..**

### **Existing Law**

Administrative Code Chapter 6 establishes the policies, procedures, and required contract terms that apply under City law to public works contracts, including construction contracts and contracts for related design and engineering services. If the Board of Supervisors adopts this proposed uncodified ordinance, the property located at 1415 Scott Street commonly known as Midtown Park Apartments would be exempt from Administrative Code Chapter 6, but would still be required to comply with the prevailing wage and apprenticeship requirements of Administrative Code Section 23.61. There are no amendments to current law.

### **Background Information**

On December 30, 1968, the City acquired Midtown Park Apartments (the "Property"), which is a 140-unit residential housing development located at 1415 Scott Street (Assessor's Parcel Block No. 1099, Lot 31) in the Western Addition neighborhood, to provide housing for families displaced by urban renewal policies.

On January 31, 2014, the City entered into a month-to-month Management and Lease Agreement with Mercy Midtown Inc. ("Mercy"), to operate, maintain, and manage the Property as a residential housing development, including completing necessary repairs and changes requested by the City. On January 1, 2020, Kalco Properties, Inc. ("Kalco") assumed Mercy's obligations under the Management and Lease Agreement related to the operations, maintenance, and management of the Property.

Critical urgent repairs and capital improvements are needed at the Property, including replacement of heating and hot water systems, City-required soft story upgrades, roof and window replacement, and fire safety system upgrades. MOHCD desires for Kalco to complete these critical urgent repairs and capital improvements at the Property, and MOHCD and Kalco desire to enter into a separate agreement regarding such critical urgent repairs and capital

improvements at the Property, which may be subject to the prior approval of the Board of Supervisors, as required by the Charter.

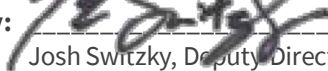
This proposed ordinance would exempt the Property from Administrative Code Chapter 6, and would still require compliance with the prevailing wage and apprenticeship program requirements of Administrative Code Section 23.61.



## GENERAL PLAN REFERRAL

13 September 2024

**Case No.:** 2024-007686GPR  
**Block/Lot No.:** 1099/031  
**Project Sponsor:** Mayor's Office of Housing & Community Development  
**Applicant:** Cindy Heavens – (628) 652-5831  
cindy.heavens@sfgov.org  
1 South Van Ness, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
**Staff Contact:** Danielle Ngo – (628) 652-7591  
[danielle.ngo@sfgov.org](mailto:danielle.ngo@sfgov.org)

**Recommended By:**   
Josh Switzky, Deputy Director of Citywide Policy for  
Rich Hillis, Director of Planning

**Recommendation:** Finding the project, on balance, is **in conformity** with the General Plan

Please note that a General Plan Referral is a determination regarding the project's consistency with the Eight Priority Policies of Planning Code Section 101.1 and conformity with the Objectives and Policies of the General Plan. This General Plan Referral is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

### Project Description

The Project is the renovation of Midtown Park Apartments ("Midtown"), a 140-unit multifamily rental housing development in Western Addition owned by the City and County of San Francisco (Mayor's Office of Housing & Community Development ("MOHCD")). Midtown was built in 1962 and contains 140 units in six (6) buildings. The buildings have the following addresses and contain the number of units shown below:

- 1415 Scott Street. Building ("Bldg") #1 – 30 units. This is the primary address.
- 2040 O'Farrell. Bldg 2 – 22 units.
- 2060 O'Farrell. Bldg 3 – 22 units.
- 1450 Divisadero. Bldg 4 – 22 units.
- 2121 Geary. Bldg 5 – 22 units.

- 2141 Geary. Bldg 6 – 22 units.

In 2014 or thereafter, one (1) unit was turned into a property management office and community room, leaving 139 remaining units. There are laundry rooms in two (2) buildings. Of the 139 units, 105 units are currently occupied.

Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. There are some key health and safety items in violation of the current code. With the lack of adequate fire safety, buildings are becoming difficult to insure. Failure of one system could be catastrophic with death, injury, and/or large displacement. Extremely low rents of existing tenants cause an annual operations gap, and this operation's gap is filled by MOHCD.

Over the next five years, MOHCD or its property management agent would like to repair or replace failing systems, depending on available funds. All six (6) buildings would undergo repairs or replacements of the following systems:

- Fire Alarm
- Fire Sprinklers
- Heaters/Hot Water
- Structural Upgrades
- Roof
- Windows
- Balcony
- Paint of Exterior and Interior Units

In addition, if funding allows, add a laundry room at one (1) building and another between two (2) buildings.

The City, working through MOHCD, has three goals it hopes to achieve with the repair and replacement plan for Midtown:

- 1) Bring Midtown to code and mitigate risk from health and safety issues;
- 2) Rent vacant units after repairs at or near market rates to eliminate ongoing City operating subsidy through MOHCD to Midtown; and,
- 3) Discourage, through lease enforcement, new tenants from installing and using in-unit washers and dryers.

The Project requires a General Plan Referral as it pertains to "project plans for public housing, or publicly assistant private housing in the City and County" (San Francisco Charter §4.105. Planning Commission).

## Environmental Review

The project was determined to be categorically exempt under CEQA Guidelines Section 15301 on 8/23/2024 (Planning Case No. 2024-007686PRJ).

## General Plan Compliance and Basis for Recommendation

As described below, the project is consistent with the Eight Priority Policies of Planning Code Section 101.1 and is, on balance, in conformity with the Objectives and Policies of the General Plan.

Note: General Plan Objectives are shown in **BOLD UPPER CASE** font; Policies are in **Bold** font; staff comments are in *italic* font.

### HOUSING ELEMENT

#### OBJECTIVE 1.A

##### **ENSURE HOUSING STABILITY AND HEALTHY HOMES**

###### **POLICY 2**

**Preserve affordability of existing subsidized housing, government-owned or cooperative-owned housing, or SRO hotel rooms where the affordability requirements are at risk or soon to expire.**

*The Project will preserve affordability of existing government-owned housing. Midtown is a multifamily rental housing development in Western Addition owned by the City and built in 1962. There are 105 out of 139 units that are currently occupied. After repairs and replacements, the vacant units will be rented at or near market rates to eliminate the annual operations gap and ongoing City operating subsidy through MOHCD to Midtown. This will support preservation of the currently occupied units at extremely low rents.*

###### **POLICY 39**

**Support the repair and rehabilitation of housing to ensure life safety, health, and well-being of residents, especially in Environmental Justice Communities, and to support sustainable building practices.**

*The Project will support the repair and rehabilitation of housing to ensure life safety, health, and well-being of residents. Since Midtown's initial construction in 1962, no major renovation has occurred, and major systems are failing. The failure of one system could be catastrophic to death, injury, and/or large displacement. Depending on available funds, MOHCD or its property management agent would repair or replace failing systems over five years, including: fire alarm; fire sprinklers; heaters/hot water; structural upgrades; roof; windows; balcony; and paint of exterior and interior units. These improvements address conditions of life safety, health, and well-being.*

#### OBJECTIVE 5.B

##### **ADVANCE ENVIRONMENTAL JUSTICE, CLIMATE, AND COMMUNITY RESILIENCE**

###### **POLICY 39**

**Support the repair and rehabilitation of housing to ensure life safety, health, and well-being of residents, especially in Environmental Justice Communities, and to support sustainable building practices.**

See Objective 1.A, Policy 39.

## SAFETY & RESILIENCE ELEMENT

### OBJECTIVE 3.1.

**EXISTING BUILDINGS. ENSURE RETROFITS AND RENOVATIONS TO EXISTING STRUCTURES INCREASE BUILDING LONGEVITY AND MEET CURRENT BEST PRACTICES TO PROTECT OCCUPANTS AND STRUCTURES.**

#### POLICY 3.1.1.

**Reduce the risks presented by City-owned structures and privately-owned buildings and provide assistance to vulnerable communities with limited adaptive capacity to reduce those risks.**

*The Project will reduce the risks presented by City-owned structures and provide assistance to vulnerable communities with limited adaptive capacity to reduce those risks. Midtown is a multifamily rental housing development in Western Addition owned by the City and built in 1962. There are 105 out of 139 units that are currently occupied, with extremely low rents for existing tenants. Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. There are some key health and safety items in violation of the current code. The Project's repair and replacement plan aims to bring Midtown to code and mitigate risk to tenants from health and safety issues by addressing major systems such as structural upgrades, fire sprinklers, heaters/hot water, and roof.*

#### POLICY 3.1.3.

**Abate structural and non-structural hazards in City-owned properties.**

*The Project will abate structural and non-structural hazards in City-owned properties. Since Midtown's initial construction in 1962, no major renovation has occurred, and major systems are failing. There is lack of adequate fire safety, and so the buildings are becoming difficult to insure. There are some key health and safety items that are in violation of the current code. The Project has a repair and replacement plan over five years to address major systems, such as fire alarms, hot water, and structural upgrades, to mitigate risk from health and safety issues that could lead to death, injury, and/or large displacement.*

#### POLICY 3.1.5.

**Support the ability to shelter in place and provide help for vulnerable communities with limited adaptive capacity.**

*The Project will support the ability to shelter in place and provide help for vulnerable communities with limited adaptive capacity. Since Midtown's initial construction in 1962, no major renovation has occurred, and major systems are failing. There are some key health and safety items that are in violation of the current code. The Project has a repair and replacement plan over five years to address major systems, such as fire, water, and structural upgrades, to mitigate risk from health and safety issues. These improvements will support the existing tenants in the currently occupied units; mitigate risk of death, injury, and/or large displacement from system failure; and support the ability to shelter in place.*

#### POLICY 3.1.9.

**Reduce hazards from gas-fired appliances and gas lines, removing gas lines when possible, focusing on communities with concentrations of older housing stock.**

*The Project will reduce hazards from gas-fired appliances and gas lines, focusing on communities with concentrations of older housing stock. Since Midtown's initial construction in 1962, no major renovation has occurred, and major systems are failing. There are some key health and safety items that are in violation of the current code. There is lack of adequate fire safety, and so the buildings are becoming difficult to insure. Midtown has a repair and replacement plan for failing systems, such as fire alarm, fire sprinklers, and heaters/hot water, that will bring Midtown to code and mitigate risk from health and safety issues. These improvements will reduce hazards from gas-fired appliances and gas lines.*

**POLICY 3.1.10.**

**During building retrofits, follow a comprehensive retrofit strategy to provide support to vulnerable communities, reduce greenhouse gas emissions, and reduce the risk of property loss and damage during wildfires, flooding, and seismic hazards.**

*The Project is a repair and replacement plan for Midtown over five years. The retrofits of the buildings follow a comprehensive strategy to provide support to vulnerable communities, reduce greenhouse gas emissions, and reduce the risk of property loss and damage during wildfires, flooding, and seismic hazards. Since Midtown's initial construction in 1962, no major renovation has occurred, and major systems are failing. There are some key health and safety items that are in violation of the current code. With the lack of adequate fire safety, buildings are becoming difficult to insure. Depending on available funds, the repair and replacement plan will address failing systems such as: fire alarms, fire sprinklers, heaters/hot water, and structural upgrades. These improvements will reduce the risks from wildfires, flooding, and seismic hazards.*

**OBJECTIVE 6.1.**

**BUILDINGS AND INFRASTRUCTURE. MAXIMIZE THE OPPORTUNITIES TO RESTORE AND REBUILD THE BUILT ENVIRONMENT WITH RESILIENCE TO ALL HAZARDS.**

**POLICY 6.1.1.**

**Support actions to mitigate the spread of homelessness pre-disaster and increase the likelihood that the City's stock of lowest-cost housing will survive post-disaster.**

*The Project will support actions to mitigate the spread of homelessness pre-disaster and increase the likelihood that the City's stock of lowest-cost housing will survive post-disaster. There are currently 105 units occupied at Midtown, out of 139 units, and some existing tenants have extremely low rents. Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. Failure of one system could be catastrophic with death, injury, and/or large displacement. The Midtown's repair and replacement plan aims to bring Midtown to code and mitigate risk from health and safety issues. These improvements mitigate the risk of displacement and homelessness to existing tenants pre-disaster and increase the resilience of Midtown buildings to survive post-disaster.*



**Planning Code Section 101 Findings**

Planning Code Section 101.1 establishes Eight Priority Policies and requires review of discretionary approvals and permits for consistency with said policies. The Project is found to be consistent with the Eight Priority Policies as set forth in Planning Code Section 101.1 for the following reasons:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

*The Project would have no effect on existing neighborhood-serving retail uses. There is no neighborhood-serving retail in the Midtown complex. The complex is an existing and occupied multifamily rental development.*

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

*The Project would not have a negative effect on the cultural and economic diversity of the neighborhood. Midtown is existing and occupied multifamily rental development. The Project intends to repair and/or replace major building systems at Midtown in a manner that preserves the cultural and economic diversity.*

3. That the City's supply of affordable housing be preserved and enhanced;

*The Project is an existing and occupied multifamily rental development managed MOHCD. The Project intends to repair and/or replace major building systems in a manner that preserves and enhances the City's supply of affordable housing at Midtown.*

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

*The Project would not result in impeding MUNI transit service or overburdening streets and neighborhood parking. Midtown is an existing and occupied multifamily rental development. The Project intends to repair and/or replace major building systems in a manner that does not impede MUNI transit or overburden streets and neighborhood parking.*

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

*The Project would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired. By repairing and/or replacing major building systems at Midtown, the diverse economic base of industrial and service sector workers—some of whom live at Midtown Park Apartments—are protected because they will not be forced to relocate if a building system fails. MOHCD, through its property owner, will require prevailing wages of any vendor that works on a repair or replacement to a major building system. Therefore, this approach enhances future opportunities for resident employment and ownership in the*

*sectors selected by the vendor to do repairs or replacement.*

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

*The Project would enhance the City's preparedness against injury and loss of life in an earthquake. Constructed in 1962, Midtown has had no major renovation, and major systems are failing. The Project at Midtown intends to have structural repair that will bring the building up to current City codes, related to preparedness to protect against injury and loss of life in the event of an earthquake.*

7. That the landmarks and historic buildings be preserved;

*The Project would not have a negative effect on the City's landmarks and historic buildings. While Midtown Park Apartments was constructed over 50 years ago, the planned repairs and/or major building systems replacement will not change the building façade. If MOHCD has funds available, the building exterior may be repainted with elastomeric paint to seal cracks and prevent spauling. The architectural history of Midtown Park Apartments will be maintained. There are no surrounding landmarks and historic buildings that are preserved.*

8. That our parks and open space and their access to sunlight and vistas be protected from development;

*The Project is an existing and occupied multifamily rental development that intends to repair and/or replace major building systems. The parks and open space and their access to sunlight and vistas would not be affected by the repairs and/or replacement of major building systems.*

**Recommendation: Finding the project, on balance, is in conformity with the General Plan**

**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 Guaioco, Vice President

**ASSIGNEE:**

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


By:


Its:

  
*Barry Levy*  
*President*

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Andrico Penick  
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

**From:** [The Civil Service Commission](#)  
**To:** [Henderson, Karen \(MYR\)](#); [Heavens, Cindy \(MYR\)](#)  
**Subject:** MYR [DHRPSC0004683] was approved by CSC on 2024-12-02  
**Date:** Tuesday, December 3, 2024 10:20:35 AM  
**Attachments:** [image](#)  
[image](#)

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CIVIL SERVICE COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

### NOTICE OF CIVIL SERVICE COMMISSION ACTION

Hello Karen Henderson,

At its meeting on **2024-12-02 14:00:00 PST**, the Civil Service Commission had for its consideration the MYR PSC [DHRPSC0004683].

The Civil Service Commission, APPROVED PSC [DHRPSC0004683] on 2024-12-02.

**CSC Approval Type:** Approval Granted

**Relevant Comments:**

If this matter is subject to Code of Civil Procedure (CCP) Section 1094.5, the time within which judicial review must be sought is set forth in CCP Section 1094.

***NOTE: It is important that a copy of this action be kept in the department files as you will need it in the future as proof of Civil Service Commission approval. Please share it with everyone responsible for follow-up.***

### **CIVIL SERVICE COMMISSION**

**Sandra Eng | Executive Officer**

#### **PSC Summary**

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**Record Number:** DHRPSC0004683 v 1.0

**Description of Proposed Work:** Over the next five years, the Mayor's Office of Housing and Community Development or its property management agent, would like to repair or replace failing systems. Depending on available funds, the Mayor's Office of Housing and Community Development or its property management agent and the property management's vendors would repair or replace failing systems over five years.

**Request Type:** New

**Approval Type:** CSC Approval

**CSC Review Reason(s):**

✔ CSC Approval by Amount

**Submitting Department:** MYR

**Dept PSC Coordinator:** Karen Henderson

**Dept PSC Coordinator Email:** karen.henderson@sfgov.org



**DHR Admin/Reviewer:** Suzanne Choi  
**CSC Admin/Reviewer:** Lavena Holmes  
**PSC Amount:** \$9,800,000.00  
**PSC Duration (months):** 60  
**Funding Source(s):** City Funds

**Scope of Work:** Midtown Park Apartments ("Midtown") is a 140-unit multifamily rental housing development in Western Addition owned by the City and County of San Francisco. Midtown was built in 1962 and contains 140 units in six (6) buildings. In 2014 or thereafter, one (1) unit was turned into a property management office and community room, which changed the residential units from 140 residential units to 139 residential units. There are laundry rooms in two buildings. Of the 139 units (140 units excluding the property management office and community room), 105-units are currently occupied. Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. Some key health and safety items are in violation of the current code. Because of lack of adequate fire safety, buildings are becoming difficult to insure. Failure of one system could be catastrophic with death, injury and/or large displacement. Extremely low rents of existing tenants cause an annual operations gap, and this operations gap is filled by Mayor's Office of Housing and Community Development ("MOHCD"). Over the next five years, the Mayor's Office of Housing and Community Development or its property management agent, would like to repair or replace failing systems. Depending on available funds, Mayor's Office of Housing and Community Development or its property management agent and the property management's vendors would repair or replace failing systems over five years. All six (6) building will undergo repairs or replacement the following systems: • Fire Alarm • Fire Sprinklers • Heaters/Hot Water • Structural upgrades • Roof • Windows • Balcony • Paint of exterior and interior units In addition to the above and if Mayor's Office of Housing and Community Development has funds, a proposal to add a laundry room at one building and another between 2 buildings could occur. The City and County of San Francisco working through the Mayor's Office of Housing and Community Development has three goals it hopes to achieve with the repair and replacement plan for Midtown. The goals are (1) bring Midtown to code and mitigate risk from health and safety issues; (2) rent vacant units after repairs at or near market rates to eliminate ongoing City and County of San Francisco operating subsidy through the Mayor's Office of Housing and Community Development to Midtown, and (3) discourage, through lease enforcement, new tenants from installing and using in-unit washers and dryers. Mayor's Office of Housing and Community Development is requesting that any and all repair work be done by the property management company that the Mayor's Office of Housing and Community Development - MOHCD previously received Civil Service Commission ("CSC") approval in April 2021 (PSC Number 49538-20/21) for a property management contract, or the property management company's vendors and/or consultants, if needed. All proposed work is work that a property management agent could perform and has experience working with occupied residential tenants. Also, the ability to complete these repairs and other necessary repairs is critical to operate and maintain Midtown in manner consistent with state property management laws and reduce the City and County of San Francisco liability. The property management company Mayor's Office of Housing and Community Development - MOHCD selected and working with the Mayor's Office of Housing and Community Development - MOHCD must have the ability to coordinate the appropriate vendors and consultants to assist with all necessary and required work that cannot be performed by the property managers maintenance staff, and all necessary and required work must be completed in a timely manner.

**PSC Justification(s)**

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- ✔ Services required on an as-needed, intermittent, or periodic basis
- ✔ Services requiring specialized expertise, knowledge experience

[Take me to the PSC Record](#)

Ref:TIS5498900\_khegwzMuEsLf4t6wZBkz

## **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 (20<sup>th</sup>) 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 1<sup>st</sup> 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, 5<sup>th</sup> 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](http://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 sublessees 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:**

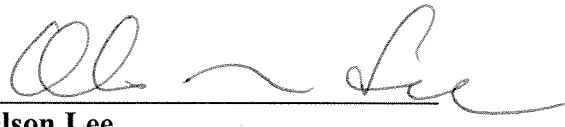
**MERCY MIDTOWN INC,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

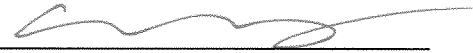
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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:**

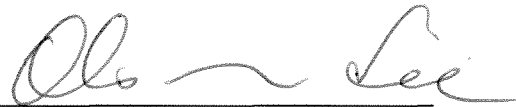
**MERCY MIDTOWN INC,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

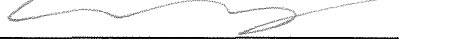
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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  
day and year first above written.

**MERCY:**


**MERCY MIDTOWN INC,**  
a California nonprofit public benefit corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CITY:**

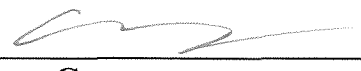
**CITY AND COUNTY OF SAN FRANCISCO,**  
a municipal corporation

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**



## AMENDMENT TO MANAGEMENT & LEASE AGREEMENT

This Amendment to Management and Lease Agreement ("Amendment") is made as of May 1, 2014, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("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 located at 1415 Scott Street, 1450 Divisadero Street, 2121 Geary Boulevard, 2141 Geary Boulevard, 2040 O'Farrell Street, and 2060 O'Farrell Street, San Francisco, which consists of approximately 54,918 square feet of land, with 6 buildings containing 139 residential dwelling units (collectively, the "Premises").

B. City has leased the Premises to Mercy pursuant to that certain Management and Lease Agreement dated January 31, 2014 ("Lease").

C. The Lease inadvertently included boilerplate City language that is not applicable to the Lease. The parties now desire to amend the Lease to remove the language and confirm that the Lease became effective immediately upon execution and delivery by the City and Mercy.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

1. Amendment. The City and Mercy acknowledge and agree that the Lease is a month-to-month lease, and therefore under San Francisco Administrative Code Section 23.31, the City's Director of Property had the authority to approve and enter into the Lease on behalf of the City without the approval of the City's Board of Supervisors or Mayor. The parties hereby confirm and agree that (i) the inclusion of Lease Section 36.4 was an inadvertent mistake and was not intended by the parties, (ii) Section 36.4 was of no force and effect with respect to the Lease; and (iii) the Lease became effective immediately upon execution and delivery by Mercy and the City. Accordingly, Section 36.4 is hereby deleted from the Lease, effective January 31, 2014.

2. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Amendment without the approval of the City's Board of Supervisors or Mayor.

3. References. No reference to this Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

4. Applicable Law. This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

5. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Amendment.

6. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Amendment shall not

constitute a waiver of relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Amendment.

In witness whereof, the parties hereto have executed this Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,  
a California nonprofit public benefit corporation

By: Amy Bagley  
Its: Assistant Secretary

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: John Updike  
Its: Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: Evan A. Gross  
Evan A. Gross  
Deputy City Attorney

## SECOND AMENDMENT TO MANAGEMENT & LEASE AGREEMENT

This Second Amendment to Management and Lease Agreement ("Second Amendment") is made as of 3/27, 2015, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("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 located at 1415 Scott Street, 1450 Divisadero Street, 2121 Geary Boulevard, 2141 Geary Boulevard, 2040 O'Farrell Street, and 2060 O'Farrell Street, San Francisco, which consists of approximately 54,918 square feet of land, with 6 buildings containing 139 residential dwelling units (collectively, the "Premises").

B. City has leased the Premises to Mercy pursuant to that certain Management and Lease Agreement dated January 31, 2014, as amended by an Amendment to Management and Lease Agreement dated May 1, 2014 ("Lease").

C. Since Lease commencement, Mercy has completed income certifications for a significant portion of the Existing Occupants, and the City has finalized the terms of its rent program for the Premises. As a result, the parties now desire to modify certain Lease terms. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

1. Amendments to Lease. The Lease shall be amended as follows:

(a) Section 1.13 "Rental Credit Program" shall be deleted and replaced with the defined term "Rent Modification Program". All references to "Rental Credit Program" in the Lease shall now be deemed a reference to the "Rent Modification Program". The definition of "Rent Modification Program" shall be as follows:

"Rent Modification Program" means the program established by MOHCD whereby rental charges for Existing Occupants are set forth, as more particularly described in Attachment 2 hereto.

(b) The following definitions shall be added to Article 1:

**1.15 Stabilized Operating Reserve Amount** has the meaning set forth in Section 7.03.

**1.16 Surplus Cash** means the excess of Project Income over Project Expenses.

(c) Section 5.03 shall be deleted and replaced with the following:

**5.03 Leasing.** Mercy shall use commercially reasonable efforts to promptly enter into new rental agreements with all Existing Occupants no later than June 26, 2015, or such later date as mutually agreed to by Mercy and the City. 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, provided that the Existing Occupant executes an agreement acknowledging his or her voluntary decision to terminate the rental agreement on a specified date. Mercy shall not lease a unit nor enter into new rental agreements with anyone who is not an Existing Occupant without the MOHCD Director's prior written consent, in its reasonable discretion. In the event that the MOHCD Director consents, and Mercy does lease a unit to a new occupant: (i) the initial rent and all future rent levels for such unit shall not be governed by the Rent Modification Program, but will be determined by the City prior to initial occupancy; and (ii) such unit will be subject to all other terms and conditions required by City, in its reasonable discretion.

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.

(d) Section 5.06 shall be deleted and replaced with the following:

**5.06 Rents; Rent Modification Program.** From the period commencing on the Agreement Date and ending on the date the Rent Modification Program becomes effective, rents charged to each Existing Occupant shall not exceed the rent amount charged such occupant as of the Agreement Date. Upon execution of a new rental agreement for an Existing Occupant in accordance with Section 5.03 above, Mercy shall charge rents for such Existing Occupant at the rates set forth in the Rent Modification Program; provided, however, that for any Existing Occupant that refuses to complete an income certification prior to the date the Rent Modification Program becomes effective, Mercy may charge such tenant a monthly market rate rent as follows: (i) \$1,740 per month for a one bedroom unit; (ii) \$2,935 per month for a two bedroom unit; (iii) \$3,575 per month for a three bedroom unit; and (iv) \$3,700 per month for a three bedroom plus unit. Annually thereafter, income certification and the Rent Modification Program shall be mandatory for all Existing Occupants, unless City waives this requirement. For all units, Mercy shall only charge rents as set and controlled by the City pursuant to this Agreement.

(e) Section 7.03 shall be deleted and replaced with the following:

### **7.03 Operating Reserve Account**

(a) City and Mercy hereby acknowledge that as of the Agreement Date, the City has established and funded a segregated interest-bearing operating reserve depository account for the Premises (the "Operating Reserve"). Subject to Section 7.03(b) below, on or before each February 1<sup>st</sup> that this Lease is in effect, City shall deposit any additional funds necessary to restore the Operating Reserve to equal Two Hundred Thousand and No/100 Dollars (\$200,000.00) (the "Stabilized Operating Reserve Amount").

(b) Notwithstanding the foregoing, on or before each June 1<sup>st</sup>, Mercy shall deposit all Surplus Cash (if any) for the previous calendar year into the Operating Reserve. Concurrently therewith, Mercy shall provide City with a report showing the amount of Surplus Cash deposited into the Operating Reserve, and a calculation showing the remaining amount of funds needed in the Operating Reserve to satisfy the Stabilized Operating Reserve Amount. If any additional funds are needed to satisfy the Stabilized Operating Reserve Amount, City shall deposit such funds as set forth in Section 7.03(a) above.



(c) 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.

(f) Section 16.01 shall be amended by adding the following:

By no later than May 1, 2015, Mercy shall also procure and maintain Property Insurance, special form coverage against direct physical loss to the Premises, excluding earthquake, earth movement, and flood, with a limit no less than full replacement value of the Premises with no coinsurance penalty provision; provided however, that if Mercy is unable to procure Property Insurance at a reasonable cost despite using commercially reasonable efforts, City shall be responsible for procuring the Property Insurance.

(g) A new Section 36.19 shall be added as follows:

**36.19 Additional City Requirements.** Mercy shall also comply with the City requirements set forth in Attachment 3.

(h) The "Additional City Requirements" attached hereto as Exhibit A shall be inserted into the Lease as Attachment 3.

(i) The "Rent Modification Program" attached hereto as Exhibit B shall be inserted into the Lease as Attachment 2.

2. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Second Amendment without the approval of the City's Board of Supervisors or Mayor.

3. References. No reference to this Second Amendment is necessary in any instrument or document at any time referring to the Lease. Any future reference to the Lease shall be deemed a reference to such document as amended hereby.

4. Applicable Law. This Second Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

5. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Second Amendment.

6. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Second Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Second Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Second Amendment.


In witness whereof, the parties hereto have executed this Second Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,  
a California nonprofit public benefit corporation

By:   
Its: Vice President

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
John Updike  
Its: Director of Property

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Evan A. Gross  
Deputy City Attorney

## EXHIBIT A

### ADDITIONAL CITY REQUIREMENTS

Mercy shall comply with the following additional City provisions, to the extent applicable:

1. Criminal History in Hiring and Employment Decisions

(a) Unless exempt, Mercy agrees to comply with and be bound by all of the provisions of San Francisco Administrative Code Chapter 12T (Criminal History in Hiring and Employment Decisions; "Chapter 12T"), which are hereby incorporated as may be amended from time to time, with respect to applicants and employees of Mercy who would be or are performing work at the Premises.

(b) Mercy shall incorporate by reference the provisions of Chapter 12T in all subleases of some or all of the Premises, if any, and shall require all subtenants 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) Mercy and subtenants (if any) shall not inquire about, require disclosure of, or if such information is received base an Adverse Action (as defined in Chapter 12T) on an applicant's or potential applicant for employment, or employee's: (1) Arrest (as defined in Chapter 12T) not leading to a Conviction (as defined in Chapter 12T), unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(d) Mercy and subtenants (if any) shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (c) above. Mercy and subtenants (if any) shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(e) Mercy and subtenants (if any) shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment with Mercy or subtenant at the Premises, that the Mercy or subtenant will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(f) Mercy and subtenants (if any) shall post the notice prepared by the Office of Labor Standards Enforcement ("OLSE"), available on OLSE's website, in a conspicuous place at the Premises and at other workplaces within San Francisco where interviews for job opportunities at the Premises occur. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the Premises or other workplace at which it is posted.

(g) Mercy and subtenants (if any) understand and agree that upon any failure to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T or this Lease, including but not limited to a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or

other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

(h) If Mercy has any questions about the applicability of Chapter 12T, it may contact the City's Real Estate Division for additional information. City's Real Estate Division may consult with the Director of the City's Office of Contract Administration who may also grant a waiver, as set forth in Section 12T.8.

2. Prevailing Wages

Unless exempt, Mercy agrees to comply with the Prevailing Wage requirements set forth in San Francisco Administrative Code Section 6.22(E) in the performance of any construction work on the Premises.

3. Local Hire Requirements.

Unless exempt, Mercy agrees to comply with the Local Hiring Policy set forth in San Francisco Administrative Code Section 6.22(G) (the "Local Hiring Policy") in the performance of any repair or other construction work on the Premises. Accordingly, before starting any work where the estimated cost may exceed \$750,000, Mercy shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Policy requirements apply to the proposed work, and if OEWD determines that it does, Mercy shall comply with all such requirements. Failure to comply shall be deemed a breach of this Agreement, and Mercy may also be liable for penalties as set forth in Section 6.22(G). Without limiting the foregoing:

(1) For Covered Projects that exceed \$750,000, Mercy shall comply with the applicable mandatory participation levels for Project Work Hours performed by Local Residents, Disadvantaged Workers, and Apprentices as set forth in Section 6.22(G)(4).

(2) For Covered Projects that exceed \$1,000,000, Mercy shall prepare and submit to OEWD for approval a local hiring plan as set forth in Section 6.22(G)(6).

(3) Tenant shall comply with the applicable record keeping and reporting requirements and shall cooperate in City inspections and audits for compliance with the Local Hiring Policy.

Any capitalized term used in this Section that is not defined will have the meaning given to such term in the Local Hiring Policy.

**EXHIBIT B**  
RENT MODIFICATION PROGRAM



Mayor's Office of Housing and Community Development  
City and County of San Francisco



Edwin M. Lee  
Mayor

Olson Lee  
Director

**MIDTOWN PARK APARTMENTS**  
***Revised* RENT MODIFICATION PROGRAM**  
**March 23, 2015**

The goals of the Midtown Park Apartments ("Midtown") Rent Modification Program ("RMP") are to

- Keep current residents in their homes;
- Keep Midtown rents affordable;
- Make rent adjustments in a fair and reasonable manner; and
- Provide enough rental income for Midtown to stabilize operations.

**PROGRAM RATIONALE:**

Midtown Park Apartments is a 139-unit residential development that has historically been designated for low and moderate income households. The development is owned by the City and County of San Francisco, under the jurisdiction of the Mayor's Office of Housing and Community Development ("MOHCD") and is currently leased to Midtown-Mercy Corporation, a non-profit entity governed by Mercy Housing California.

Over the last 10 years, Midtown has not been able to cover the ordinary costs of operations (including things such as security, insurance, and utilities) because rents have stayed very low over the long term. In addition, there has been insufficient rental income to pay the regular costs of maintenance and building upkeep. Midtown now faces extreme property disrepair.

To protect residents' health and safety, Midtown must take steps to stabilize its operating budget and repair or replace its deteriorating physical conditions.

One of the steps it must take is to adjust overall rental income, which is extremely low, to a level that is higher but still affordable to the current

residents. This modification is essential to keep Midtown operating, but it also must and will be done in a fair and reasonable manner.

To achieve this, MOHCD has created the Midtown Rent Modification Program (RMP). The RMP is a critical first step toward making Midtown financially self-sufficient. The RMP is designed to reduce the gap in Midtown's operating budget as much as possible without over-burdening its residents.

It is possible that even with the rent increases under the RMP, Midtown will continue to need ongoing assistance from the City to pay all of its operating and maintenance costs. But Midtown residents cannot rely on other San Franciscans to help pay their housing costs indefinitely, particularly if some Midtown residents are paying far less than what is affordable to them. For the time being, however, the City is committed to providing Midtown with additional operating subsidies on an emergency basis until Midtown's operating budget is fully stabilized.

### **2015 REVISIONS TO RMP:**

- Cost Increase Adjustment eliminated;
- Phasing schedule simplified to 3 years for households earning over \$100,000 and 5 years for households earning under \$100,000; and
- ***Beginning in 2016***, RMP participation will be required, residents must execute a lease with property management and the Midtown unit must be the household's primary residence.

### **RENTS UNDER THE RMP:**

Under the RMP, all Midtown residents, regardless of their income, will pay 30% of their household income toward rent, which is the widely accepted standard of affordability used for federal housing programs, such as Section 8 assistance. Further, rents that are set at 30% of household income offer far deeper affordability than what is available at most other affordable housing developments in the City and nationally.

Rents will be based on 30% of the household's pre-tax or "**gross**" income or market rate, whichever is less. At each annual lease renewal, if the household's income increases, the annual rent will also be increased so that the rent remains 30% of the household's income; if a household's income decreases or remains unchanged, rent will remain unchanged. All household members must be included in the certification process.

For example, a household with an annual income of \$44,000 (the average income at Midtown), will have a rent of \$1,100 (30% of \$44,000 divided by 12) the first year of the RMP.



### RMP Assurances:

- **Beginning 2016, the Midtown unit must be the household's primary residence.**
- No tenant will be evicted solely because his or her income is too high or too low.
- For Midtown residents currently paying less than 30% of their incomes in rent, rent increases will be phased in over time (see below for more on rent increase phasing).
- Midtown residents paying *more* than 30% of their incomes in rent will see a rent *decrease* effective immediately upon execution of a new lease.
- Rents for Midtown residents now paying 30% of their incomes will remain the same.

### **2015 RMP PROCESS AND TIMING:**

Step one – Income Certifications: All current households **that did not complete a certification interview and submit all documents in 2014** must certify their incomes in order to participate in the RMP. The deadline to complete the income certification interview and submit required documentation has been extended. Property management will be conducting interviews from **April 6, 2015 to April 17, 2015.**

Step two – Rent Determination and Noticing: The adjusted rent based on 30% of the household's income or market rate, whichever is less, will be determined in accordance with the following:

- Households currently paying more than 30% of their income for rent will have a one-time reduction of their rent to the 30% level at the execution of a new lease.
- Households currently paying 30% of their income for rent (and no more) will see no change in their rent this year.
- Households paying less than 30% of their income for rent will see an increase phased-in over 3 or 5 years beginning with the execution of a new lease.
- Rent notifications distributed to all residents on **March 30, 2015.**

Step three – Resident Appointments: At the resident's request, Mercy and MOHCD will meet individually with each household to discuss any proposed adjustments to the rent and the proposed phase-in plan for implementing

those adjustments over time. Residents are encouraged to bring a trusted friend or family member to the appointment.

Step four – New Rents Start: New rents (including gradual increases as necessary) will be effective upon execution of new leases. As of the date of this notice, property management anticipates entering into new leases with current residents no later than **June 26, 2015**.

Step five – Annual Income Re-certifications: Steps one through three will be repeated each year, starting with an annual re-certification of household income.

### **RENT CHANGE PHASING**

Rent **decreases** for households currently paying **more than 30%** of their incomes in rent will be immediate upon execution of new leases effective **July 1, 2015**.

Rent **increases** for households that are currently paying **less than 30%** of their incomes in rent are effective **July 1, 2015** and will be phased in over 3 or 5 years as follows:

- Households earning *over \$100,000* will be phased-in over 3 years
- Households earning *\$100,000 and under* will be phased-in up to 5 years

Rent charges for households that do not participate in the RMP will be market-rate (see below) and will be effective **July 1, 2015**.

### **RMP ELIGIBILITY AND FAILURE TO INCOME CERTIFY:**

The RMP is available to all households that currently reside at Midtown and who complete the income certification process, regardless of their income. The income certification process is essential to the successful transformation of Midtown Park Apartments to sustainable, healthy, safe, secure and affordable housing. Without this information, establishing and maintaining Midtown's affordability for all of its residents would be impossible.

Failure to participate in the certification process or to include all household members in the certification process jeopardizes Midtown's ability to improve its financial stability.

**Therefore, any household that fails to complete the income certification process will be disqualified from participating in the RMP.**

### **MARKET-RATE CHARGES**

For households that do not certify their incomes it will be impossible to determine whether a household's current rent meets the program goal of 30%

of income. Therefore, any household that fails to complete the interview and submit complete income certification information by **April 17, 2015** will be charged a monthly rent as follows:

1-bedroom \$1,740  
2-bedroom \$2,935  
3-bedroom \$3,575  
3-bedroom+ \$3,700

The above monthly rental rates are based on the most recent market rate survey conducted by the City. Such rental rates shall be subject to periodic increases based on updated market rate surveys conducted by the City.

**Beginning in 2016, participation in the RMP will be mandatory and all households will be required to income certify and execute a lease in order to live at Midtown Park Apartments.**



### THIRD AMENDMENT TO MANAGEMENT & LEASE AGREEMENT

This Third Amendment to Management and Lease Agreement ("Third Amendment") is made as of 11/17, 2016, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("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. City and Mercy are parties to that certain Management and Lease Agreement dated as of January 31, 2014, as amended by an Amendment to Management and Lease Agreement dated as of May 1, 2014; as further amended by a Second Amendment to Management & Lease Agreement dated as of March 27, 2015 (collectively, the "Lease"), pursuant to which Mercy leases and manages the Premises. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

B. Mercy has determined that certain Changes to the Improvements are necessary for the benefit of the Site and the residents, and the City has approved and has agreed to fund such Changes, subject to certain terms and conditions.

C. The parties now desire to enter into this Third Amendment to set forth the scope of work for the Changes and the terms and conditions of their agreement in connection therewith and to otherwise amend the Lease as more particularly set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

1. Scope of Work. As required under Section 5.10 of the Lease, the City hereby approves the Changes set forth in Exhibit A, attached hereto and by this reference made a part hereof (the "Scope of Work"). The Scope of Work shall be performed in compliance with this Third Amendment and Exhibit B, attached hereto and by this reference made a part hereof.

2. Definitions. The following additional definitions shall apply to this Third Amendment:

- a. "Disbursement" means the disbursement of all or a portion of the Funding Amount by the City.
- b. "Expenditure Request" means a written request by Mercy for a Disbursement from the Funding Amount, which must certify that the costs covered by the Expenditure Request have been paid or incurred by Mercy.

3. Funding.

- a. The City is authorized under a contract with the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§ 5301 *et seq.*), to distribute

Community Development Block Grant ("CDBG") funds (the "Funds") for the specific and special purpose of increasing the housing stock in the City for low- and very low-income persons. The City agrees to provide to Mercy up to \$5,000,000 (the "Funding Amount") of CDBG funds in order to finance the Scope of Work. The Funding Amount will be disbursed according to the terms and subject to the conditions set forth in Section 5 of this Amendment, below.

- b. The provisions of 24 CFR part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR part 570, "Community Development Block Grants" are applicable to all activities funded under this Third Amendment.

4. Performance of the Scope of Work. Mercy must comply with the following provisions in performing the Scope of Work.

- a. Selection Requirements. In the selection of all contractors and professional consultants for the Premises, Mercy must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time (the "Contracting Manual"), and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.
- b. Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Premises, Mercy must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Premises entered into between Mercy and Mercy's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Premises. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Scope of Work, Mercy must retain the Approved Plans as well as "as-built" plans for the Premises, the Approved Specifications and the Construction Contract, all of which Mercy must make available to the City upon request.
- c. Change Orders. Mercy may not approve or permit any change orders to the plans and specifications approved by the City without the City's prior written consent. Mercy acknowledges that the City's approval of any change order will not

constitute an agreement to provide additional funds for the Scope of Work, unless the City agrees in its sole discretion to provide additional funds for that purpose.

- d. Insurance, Bonds and Security. Notwithstanding Article 16 of the Lease, in connection with the Scope of Work Mercy must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit C, attached hereto and by this reference incorporated herein, from the date of this Amendment until the Completion Date and deliver to the City insurance endorsements and bonds as described in Exhibit C.
- e. Notice to Proceed. No demolition, rehabilitation or construction may commence until Mercy has issued a written notice to proceed with the City's approval.
- f. Commencement and Completion of Premises. Unless otherwise extended in writing by the City, Mercy must: (a) commence demolition, rehabilitation or construction by a date no later than December 1, 2016; and (b) complete the Changes by a date no later than December 1, 2017, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification such as signed off job cards provided by the Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date").
- g. Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

5. Demolition, Rehabilitation or Construction Disbursements. The City's obligation to approve any capital expenditure is subject to Mercy's satisfaction of the following conditions precedent.

- a. Mercy must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices dated no earlier than August 29, 2016, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.
- b. No breach of the Lease may have occurred that remains uncured as of the date of the Expenditure Request.
- c. With respect to any Expenditure Request that covers rehabilitation or construction costs, Mercy must have certified to the City that the Premises complies with the labor standards set forth in Exhibit B, Section 1, if applicable.

6. Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which a breach of the Lease by Mercy remains uncured, or during the pendency of an uncured breach; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Mercy under this Agreement exceed the Funding Amount.

7. Retention.

- a. In addition to the other conditions to disbursements, Mercy acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety-five percent (95%) of the approved budgeted costs on a line item basis.
- b. The remaining percentage of hard costs or tenant improvement costs associated with rehabilitation or construction may be held by the City (the "Retention") and may be released only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and each of the following conditions, unless otherwise approved in writing by the City: (a) completion of rehabilitation or construction of the Scope of Work in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification such as signed off job cards provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Scope of Work.

8. Amendments to Lease. The following new sections are hereby added to the Lease:

"36.19 **Local Hire Requirements.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.62 (the "Local Hiring Requirements"). Tenant Improvements and Alterations (as defined in Section 7.1) are subject to the Local Hiring Requirements unless the cost for such work is (i) estimated to be less than \$750,000 per building permit or (ii) meets any of the other exemptions in the Local Hiring Requirements. Tenant agrees that it shall comply with the Local Hiring Requirements to the extent applicable. Before starting any Tenant Improvement Work or any Alteration, Tenant shall contact City's Office of Economic Workforce and Development ("OEWD") to verify if the Local Hiring Requirements apply to the work (i.e., whether the work is a "Covered Project"). Tenant shall include, and shall require its subtenants to include, a requirement to comply with the Local Hiring Requirements in any contract for a Covered Project with specific reference to San Francisco Administrative Code Section 23.62. Each such contract shall name the City and County of San Francisco as a third party beneficiary for the limited



purpose of enforcing the Local Hiring Requirements, including the right to file charges and seek penalties. Tenant shall cooperate, and require its subtenants to cooperate, with the City in any action or proceeding against a contractor or subcontractor that fails to comply with the Local Hiring Requirements when required. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A contractor's or subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.62 against the breaching party.

**36.20 Prevailing Wages and Working Conditions.** Any undefined, initially-capitalized term used in this Section shall have the meaning given to such term in San Francisco Administrative Code Section 23.61. Tenant shall require its Contractors and Subcontractors performing (i) labor in connection with a "public work" as defined under California Labor Code Section 1720 et seq. (which includes certain construction, alteration, maintenance, demolition, installation, repair, carpet laying, or refuse hauling work if paid for in whole or part out of public funds) or (ii) Covered Construction, at the Premises to (1) pay workers performing such work not less than the Prevailing Rate of Wages, (2) provide the same hours, working conditions and benefits as in each case are provided for similar work performed in San Francisco County, and (3) employ Apprentices in accordance with San Francisco Administrative Code Section 23.61 (collectively, "Prevailing Wage Requirements"). Tenant agrees to cooperate with the City in any action or proceeding against a Contractor or Subcontractor that fails to comply with the Prevailing Wage Requirements.

Tenant shall include, and shall require its subtenants, and Contractors and Subcontractors (regardless of tier) to include, the Prevailing Wage Requirements and the agreement to cooperate in City enforcement actions in any Construction Contract with specific reference to San Francisco Administrative Code Section 23.61. Each such Construction Contract shall name the City and County of San Francisco, affected workers, and employee organizations formally representing affected workers as third party beneficiaries for the limited purpose of enforcing the Prevailing Wage Requirements, including the right to file charges and seek penalties against any Contractor or Subcontractor in accordance with San Francisco Administrative Code Section 23.61. Tenant's failure to comply with its obligations under this Section shall constitute a material breach of this Lease. A Contractor's or Subcontractor's failure to comply with this Section will enable the City to seek the remedies specified in San Francisco Administrative Code Section 23.61 against the breaching party. For the current Prevailing Rate of Wages, see [www.sfgov.org/olse](http://www.sfgov.org/olse) or call the City's Office of Labor Standards Enforcement at 415-554-6235.

**36.21 Consideration of Criminal History in Hiring and Employment Decisions.**

(a) Mercy agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of

the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Mercy's obligations under Chapter 12T is set forth in this Section. Mercy is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

(b) The requirements of Chapter 12T shall only apply to Mercy's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

(c) Mercy shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all 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.

(d) Mercy or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

(e) Mercy or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 16.16(d), above. Mercy or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

(f) Mercy or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that Mercy or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

(g) Mercy and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under Mercy or Subcontractor's control at which work is being done or will be done in furtherance of the performance of

this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

(h) Mercy understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

36.22 **Bottled Drinking Water.** Unless exempt, Mercy agrees to comply fully with and be bound by all of the provisions of the San Francisco Bottled Water Ordinance, as set forth in San Francisco Environment Code Chapter 24, including the administrative fines, remedies, and implementing regulations provided therein, as the same may be amended from time to time. The provisions of Chapter 24 are incorporated herein by reference and made a part of this Agreement as though fully set forth."

9. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Third Amendment without the approval of the City's Board of Supervisors or Mayor.

10. References. No reference to this Third Amendment is necessary in any instrument or document at any time referring to the Lease. Any reference to the Lease shall be deemed a reference to the Lease as amended hereby.

11. Applicable Law. This Third Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

12. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Third Amendment.

13. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Third Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Third Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Third Amendment. This Third Amendment may be executed in any number of counterparts, all of which will constitute but one agreement.

*[Signatures on following page]*

In witness whereof, the parties hereto have executed this Third Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,  
a California nonprofit public benefit corporation

By:  \_\_\_\_\_

Name: Jennifer Ddin

Its: Vice President

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:  \_\_\_\_\_

John Updike

Its: Director of Property

By:  \_\_\_\_\_

Olson Lee

Director, Mayor's Office of Housing and  
Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:  \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

**PROJECT DESCRIPTION:**

The project involves emergency mold remediation and repair work of select apartment units across 6 buildings on one lot. The Scope of Work includes but is not limited to mold remediation and repair of dry rot, and replacement of finishes in units, and select renovation of common areas and mechanical, electrical and plumbing systems.

## EXHIBIT B

### GOVERNMENTAL REQUIREMENTS

Mercy must comply, and cause its contractors to comply, with the governmental requirements set forth below from the date of this Third Amendment until the Completion Date:

1. Prevailing Wages. Every contract for the rehabilitation or construction of housing assisted with CDBG Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Dept. of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), as supplemented by Dept. of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Premises, including portions other than the assisted Units.
2. Environmental Review. The Premises must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.
3. Disability Access. Mercy must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Mercy is responsible for determining which disability access Laws apply to the Premises, including those applicable due to the use of Funds. In addition, before occupancy of the Premises, Mercy must provide to the City a written reasonable accommodations policy that indicates how Mercy will respond to requests by disabled individuals for accommodations in Units and common areas of the Premises.
4. Lead-Based Paint. Mercy must satisfy any applicable requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Mercy must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.
6. Relocation. Mercy must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24, the requirements of 24 CFR § 92.353 (Displacement, relocation, and acquisition) and similar Laws.
7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), as incorporated into MOHCD's Section 3 Plan. To ensure compliance with those



requirements, Mercy must include the provisions attached as Exhibit D in its contract with the general contractor for the Scope of Work. Mercy will be responsible to the City for ensuring compliance with the requirements listed on Exhibit D.

8. Submitting False Claims: Monetary Penalties. Mercy or any grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in Section 21.35 of the San Francisco Administrative Code. Mercy or any grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if Mercy, grantee, contractor, subcontractor or consultant:

(a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;

(b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;

(c) conspires to defraud the City by getting a false claim allowed or paid by the City;

(d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Prohibition on Use of Public Funds for Political Activities. Mercy shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Mercy is subject to the enforcement and penalty provisions in Chapter 12G.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Subject to approval by the City's Risk Manager of the insurers and policy forms, Mercy must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Third Amendment until the Completion Date at no expense to the City:

1. Mercy, Contractors.

(a) to the extent Mercy or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits 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 explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Mercy's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Mercy shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Mercy's officers and employees against dishonesty with respect to the Funds 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, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by Mercy's contractor, provided that the policy must be "claims made" coverage and Mercy must require Mercy's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.



2. Property Insurance. Mercy must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-Premises basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Mercy as dual obligees or other completion security approved by the City in its sole discretion.

3. General Requirements.

(a) General and automobile liability policies of Mercy, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Mercy hereby waives all rights of subrogation against the City to the extent of any loss covered by Mercy's insurance, except to the extent subrogation would affect the scope or validity of insurance.

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

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) 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.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Mercy must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

**EXHIBIT D**  
**First Source Hiring Requirements and Numerical Goals**

Mercy's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan.

1. **Section 3 Requirements.**

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)).  
Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30).  
Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

**CAHILL**

GMP Estimate

10-Oct-16

**Midtown Apartments - Emergency Mold Remediation  
Three (3) Phases**

Owner: Mercy Housing  
 Architect: Pyatok  
 Start Date: November 2016  
 Duration: 26 Weeks/6 Months

Line Item Description	Total Cost September 2016	SBE Participation	Subcontractor	Comments
<b>02-4000</b> Mold Remediation, Demolition, and Abatement	\$301,120	\$42,000	Asbestos Management Group	Mold Remediation and Abatement
<b>06-1010</b> Rough Carpentry	\$135,000			Dryrot Repair Allowance
<b>06-2000</b> Finish Carpentry	\$88,000			Casework/Top Replacement Allowance
<b>07-2100</b> Insulation and Firestopping	\$22,200			Acoustical Wall Insulation Allowance
<b>07-5000</b> Roofing and Waterproofing	\$30,000			Allowance
<b>07-6000</b> Sheet Metal, Flashing, Louvers and Exp Jts	\$15,000			Allowance
<b>07-9000</b> Sealants and Caulking	\$41,600			Allowance
<b>08-1000</b> Doors, Frames and Hardware	\$17,524	\$0	Warman Security	50 EA Door Lock Replacement & Roof Alarm under owner contract.
<b>08-4000</b> Windows, Storefronts, Glazing and Skylights	\$30,000			Window Repairs Allowance
<b>09-2200</b> Metal Stud Framing, Drywall and Fireproofing	\$299,567	\$242,179	Coast To Coast or RFI Meswinkel	Drywall Patching
<b>09-2400</b> Exterior Plaster	\$15,000			Allowance
<b>09-3000</b> Tile and Stone	\$21,033		DC Tile	Bathroom Tile Patching Allowance (Pending Bid)
<b>09-6400</b> Flooring - Carpet, Resilient, Wood	\$201,971	\$180,190	Golden St. Carpet	Carpet Replacement and Sheet Vinyl
<b>09-9000</b> Painting	\$285,449	\$182,295	Darden Painting	Paint Affected Areas
<b>10-2800</b> Toilet and Bath Accessories	\$9,000			Allowance
<b>10-5500</b> Mailbox	\$25,000			Allowance
<b>10-7000</b> Awnings	\$0		Zebra	20 EA New Awnings under owner contract.
<b>11-3100</b> Kitchen and Laundry Appliances	\$15,000			Allowance
<b>12-2000</b> Window Treatments	\$1,500			Drape Replacement
<b>21-0010</b> Fire Sprinklers	\$7,500			Allowance
<b>22-0010</b> Plumbing	\$33,000		O'Brien Mechanical	Leak Repairs and Toilet Remove/Reinstallation for Bath Flooring
<b>23-0010</b> HVAC	\$222,402		O'Brien Mechanical	Investigate Valve Repairs
<b>26-0010</b> Electrical, Telephone and Data	\$243,310		Brayer Electric	Add Security Cameras and new Garage Lights
<b>01-5450</b> Scaffold	\$20,000			Allowance
<b>01-5640</b> Site Security	\$29,543	\$25,000	TBD	Security During Work Hours
<b>01-7423</b> Final Cleaning	\$38,724	\$7,870	Capitol Bldg	
Unit Renovation and Common Area Allowance	\$840,000			Include Office Renovation Allowance. Add Unit 5-101 & 1-303
<b>SUBTOTAL</b>	<b>\$2,988,443</b>	<b>\$679,534</b>		
General Conditions/General Requirements	\$445,080			Based on 6 months, Three (3) Phases
Escalation for November 2016 Start 0.00%	\$0			Nov-16
Contractor's Contingency 2.00%	\$68,670			
Preconstruction Fee - Bidding & Sitewalks	\$45,000			Architectural Permitting by Owner
Liability Insurance 1.29%	\$45,759			
Contractor's Fee 4.50%	\$161,683			
G.C. Bond				Not Required
<b>GRAND TOTAL</b>	<b>\$3,754,635</b>	<b>18.10%</b>		
Building Area (enclosed sf)	57,321	There is potentially more work to increase the SBE \$ Allowances are carried for unforeseen work		
Cost Per Square Foot of Constructed Area	\$ 65.50			
Cost Per Unit - 69 Units	\$ 54,415			





Midtown Park Remediation Budget

20-Nov-16

Sources and Uses

		<del>CPMC</del> CDBG	CDBG
Construction	3,711,404	1,468,280	2,243,124
Construction Contingency (10%)	371,140	220,220	150,920
Architect	120,000	40,000	80,000
Environmental Consultant	50,000	30,000	20,000
Owner Work Hardware and Awnings	38,000		38,000
Permit/Hazardous Generator Fees	50,000	-	50,000
Insurance	7,500		7,500
Relocation	280,000	100,000	180,000
Developer Admin Fee (10%)	350,000	125,000	225,000
Soft Cost Contingency (5%)	21,901	16,500	5,401
Total	4,999,945	2,000,000	2,999,945





**CAHILL**

GMP Estimate

10-Oct-16

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06-2000 Finish Carpentry	\$88,000			Casework/Top Replacement Allowance
07-2100 Insulation and Firestopping	\$22,200			Acoustical Wall Insulation Allowance
07-5000 Roofing and Waterproofing	\$30,000			Allowance
07-6000 Sheet Metal, Flashing, Louvers and Exp Jts	\$15,000			Allowance
07-9000 Sealants and Caulking	\$41,600			Allowance
08-1000 Doors, Frames and Hardware	\$17,524	\$0	Warman Security	50 EA Door Lock Replacement & Roof Alarm under owner contract.
08-4000 Windows, Storefronts, Glazing and Skylights	\$30,000			Window Repairs Allowance
09-2200 Metal Stud Framing, Drywall and Fireproofing	\$299,567	\$242,179	Coast-To-Coast or RFJ Meiswinkel	Drywall Patching
09-2400 Exterior Plaster	\$15,000			Allowance
09-3000 Tile and Stone	\$21,033		DC Tile	Bathroom Tile Patching Allowance (Pending Bid)
09-6400 Flooring - Carpet, Resilient, Wood	\$201,971	\$180,190	Golden St. Carpet	Carpet Replacement and Sheet Vinyl
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01-5450 Scaffold	\$20,000			Allowance
01-5640 Site Security	\$29,543	\$25,000	TBD	Security During Work Hours
01-7423 Final Cleaning	\$38,724	\$7,870	Capitol Bldg.	
Unit Renovation and Common Area Allowance	\$840,000			Include Office Renovation Allowance. Add Unit 5-101 & 1-303
<b>SUBTOTAL</b>	<b>\$2,988,443</b>	<b>\$679,534</b>		
General Conditions/General Requirements	\$445,080			Based on 6 months, Three (3) Phases
Escalation for November 2016 Start 0.00%	\$0			Nov-16
Contractor's Contingency 2.00%	\$68,670			
Preconstruction Fee - Bidding & Sitewalks	\$45,000			Architectural Permitting by Owner
Liability Insurance 1.29%	\$45,759			
Contractor's Fee 4.50%	\$161,683			
G.C. Bond				Not Required
<b>GRAND TOTAL</b>	<b>\$3,754,635</b>	<b>18.10%</b>		
Building Area (enclosed sf)	\$7,321	There is potentially more work to increase the SBE \$. Allowances are carried for unforeseen work.		
Cost Per Square Foot of Constructed Area	\$ 65.50			
Cost Per Unit - 69 Units	\$ 54,415			



#### **FOURTH AMENDMENT TO MANAGEMENT & LEASE AGREEMENT**

This Fourth Amendment to Management and Lease Agreement ("Fourth Amendment") is made as of 11/16, 2017, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("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. City and Mercy are parties to that certain Management and Lease Agreement dated as of January 31, 2014, as amended by an Amendment to Management and Lease Agreement dated as of May 1, 2014 ("First Amendment"); as further amended by a Second Amendment to Management & Lease Agreement dated as of March 27, 2015 ("Second Amendment"); and as further amended by a Third Amendment to the Management & Lease Agreement dated as of November 17, 2016 (the "Third Amendment," and together with the First Amendment and Second Amendment, collectively, the "Lease"), pursuant to which Mercy leases and manages the Premises. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

B. Mercy has determined that certain Changes to the Improvements are necessary for the benefit of the Site and the residents, and the City has approved and has agreed to fund such Changes, subject to certain terms and conditions.

C. Under the Third Amendment, the City provided \$5,000,000 of CDBG funds to Mercy for Changes approved by the City. Mercy has completed the Changes on 68 units and common areas as set forth in Exhibit A attached hereto ("Phase I Changes"). After City required mandatory inspections on all units, Mercy determined that an additional 51 units need improvements. Mercy has requested additional funding to pay for such improvements, which were initially omitted from the Scope of Work funded pursuant to the Third Amendment.

D. The parties now desire to enter into this Fourth Amendment to set forth the scope of work for Phase II of the Changes and the terms and conditions of their agreement in connection therewith and to otherwise amend the Lease as more particularly set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

1. **Phase II Scope of Work.** As required under Section 5.10 of the Lease, the City hereby approves the Changes set forth in Exhibit B, attached hereto and by this reference made a part hereof (the "Phase II Scope of Work"). The Phase II Scope of Work shall be performed in compliance with this Fourth Amendment and Exhibit D, attached hereto and by this reference made a part hereof.

2. **Definitions.** The following additional definitions shall apply to this Fourth Amendment:



- a. "Disbursement" means the disbursement of all or a portion of the Funding Amount by the City.
- b. "Expenditure Request" means a written request by Mercy for a Disbursement from the Funding Amount, which must certify that the costs covered by the Expenditure Request have been paid or incurred by Mercy.

3. Funding.

- a. The City is authorized under a contract with the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§ 5301 *et seq.*), to distribute Community Development Block Grant ("CDBG") funds (the "Funds") for the specific and special purpose of increasing the housing stock in the City for low- and very low-income persons. The City agrees to provide to Mercy up to \$3,670,000 (the "Phase II Funding Amount") of CDBG funds, set forth in the Phase II Budget attached as Exhibit C, in order to finance the Phase II Scope of Work. The Phase II Funding Amount will be disbursed according to the terms and subject to the conditions set forth in Section 5 of this Amendment, below.
- b. The provisions of 24 CFR part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR part 570, "Community Development Block Grants" are applicable to all activities funded under this Fourth Amendment.

4. Performance of the Phase II Scope of Work. Mercy must comply with the following provisions in performing the Phase II Scope of Work.

- a. Selection Requirements. In the selection of all contractors and professional consultants for the Premises, Mercy must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time (the "Contracting Manual"), and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.
- b. Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Premises, Mercy must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Premises entered into between Mercy and Mercy's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Premises. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical

specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Scope of Work, Mercy must retain the Approved Plans as well as "Scopes of Work" for each unit, the Approved Specifications and the Construction Contract, all of which Mercy must make available to the City upon request

- c. Change Orders. Mercy may not approve or permit any change orders to the Approved Plans and Approved Specifications approved by the City without the City's prior written consent. Mercy acknowledges that the City's approval of any change order will not constitute an agreement to provide additional funds for the Scope of Work, unless the City agrees in its sole discretion to provide additional funds for that purpose.
- d. Insurance, Bonds and Security. Notwithstanding Article 16 of the Lease, in connection with the Phase II Scope of Work Mercy must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit E, attached hereto and by this reference incorporated herein, from the date of this Amendment until the Completion Date and deliver to the City insurance endorsements and bonds as described in Exhibit E.
- e. Commencement and Completion of Premises. Unless otherwise extended in writing by the City, Mercy must: (a) commence demolition, rehabilitation or construction by a date no later than October 1, 2017; and (b) complete the Changes by a date no later than March 15, 2018, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date").
- f. Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

5. Demolition, Rehabilitation or Construction Disbursements. The City's obligation to approve any capital expenditure is subject to Mercy's satisfaction of the following conditions precedent.

- a. Mercy must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.



- b. No breach of the Lease may have occurred that remains uncured as of the date of the Expenditure Request.
- c. With respect to any Expenditure Request that covers rehabilitation or construction costs, Mercy must have certified to the City that the Premises complies with the labor standards set forth in Exhibit D, Section 1, if applicable.

6. Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which a breach of the Lease by Mercy remains uncured, or during the pendency of an uncured breach; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Mercy under this Agreement exceed the Funding Amount.

7. Retention.

- a. In addition to the other conditions to disbursements, Mercy acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis.
- b. The remaining percentage of hard costs or tenant improvement costs associated with rehabilitation or construction may be held by the City (the "Retention") and may be released only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and, other than release of Retention to Early Retention Release Contractors, each of the following conditions, unless otherwise approved in writing by the City: (a) completion of rehabilitation or construction of the Scope of Work in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Phase II Scope of Work.

8. Amendments to Lease. The following new sections are hereby added to the Lease:

**"36.23 All-Gender Toilet Facilities.** If applicable, Tenant shall comply with San Francisco Administrative Code Section 4.1-3 requiring at least one all-gender toilet facility on each floor of any new building on City-owned land and within existing buildings leased by the City where extensive renovations are made. An "all-gender toilet facility" means a toilet that is not restricted to use by persons of a specific sex or gender identity by means of signage, design, or the installation of fixtures, and "extensive renovations" means any renovation where the construction cost exceeds 50% of the cost

of providing the toilet facilities required by this section. If Tenant has any question about applicability or compliance, Tenant should contact the [Director of Property] for guidance.

9. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Fourth Amendment without the approval of the City's Board of Supervisors or Mayor.

10. References. No reference to this Fourth Amendment is necessary in any instrument or document at any time referring to the Lease. Any reference to the Lease shall be deemed a reference to the Lease as amended hereby.

11. Applicable Law. This Fourth Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.

12. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Fourth Amendment.

13. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Fourth Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Fourth Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Fourth Amendment. This Fourth Amendment may be executed in any number of counterparts, all of which will constitute but one agreement.

*[Signatures on following page]*

In witness whereof, the parties hereto have executed this Fourth Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,  
a California nonprofit public benefit corporation

By: 

Name: JENNIFER DELIN

Its: VICE PRESIDENT

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By: 


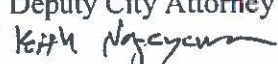
John Updike  
Its: Director of Property

By: 

Kate Hartley  
Acting Director, Mayor's Office of Housing  
and  
Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Deputy City Attorney  




**EXHIBIT A****Units Water Damage/Misc. Repairs Completed = 68:**

- |         |         |         |         |         |
|---------|---------|---------|---------|---------|
| • 1-103 | • 2-100 | • 3-101 | • 4-305 | • 6-101 |
| • 1-104 | • 2-101 | • 3-102 | • 4-308 | • 6-102 |
| • 1-112 | • 2-106 | • 3-105 | • 4-309 | • 6-103 |
| • 1-201 | • 2-107 | • 3-106 | • 5-101 | • 6-109 |
| • 1-300 | • 2-108 | • 3-108 | • 5-104 | • 6-201 |
| • 1-301 | • 2-109 | • 3-300 | • 5-106 | • 6-209 |
| • 1-302 | • 2-201 | • 3-301 | • 5-107 | • 6-300 |
| • 1-304 | • 2-209 | • 3-302 | • 5-108 | • 6-301 |
| • 1-305 | • 2-300 | • 3-304 | • 5-109 | • 6-302 |
| • 1-308 | • 2-304 | • 4-102 | • 5-209 | • 6-304 |
| • 1-310 | • 2-307 | • 4-106 | • 5-300 | • 6-305 |
| • 1-311 | • 2-308 | • 4-201 | • 5-302 | • 6-309 |
| • 1-312 | • 2-309 | • 4-300 | • 5-305 |         |
| • 1-313 | • 3-100 | • 4-301 | • 5-308 |         |

**Units Under Construction = 5:**

- |         |         |         |
|---------|---------|---------|
| • 3-109 | • 4-100 | • 6-105 |
| • 3-309 | • 4-303 |         |

**Common Areas Completed:**

- Common Area Corridor Patches
- Garbage Room Repairs
- Garage Lighting Replacement
- Security Cameras at Garages and Laundry Rooms
- Caulking at Exterior Stairwell Penetrations
- Install/Paint Tamper Rings at Roof Gates
- Replace Exterior Awnings = (17) Complete with (1) remaining and (2) TBD.
- Courtyard Deck

**Units with Completed Radiator Replacements (43):**

- |         |         |         |         |         |
|---------|---------|---------|---------|---------|
| • 1-104 | • 1-311 | • 3-106 | • 5-201 | • 6-107 |
| • 1-106 | • 1-312 | • 3-107 | • 5-209 | • 6-209 |
| • 1-108 | • 2-100 | • 3-307 | • 5-300 | • 6-304 |
| • 1-201 | • 2-109 | • 4-209 | • 5-306 | • 6-306 |
| • 1-301 | • 2-209 | • 4-301 | • 5-308 | • 6-307 |
| • 1-303 | • 2-304 | • 4-302 | • 5-309 | • 6-308 |
| • 1-304 | • 3-103 | • 4-303 | • 6-102 | • 6-309 |
| • 1-305 | • 3-104 | • 4-308 | • 6-104 |         |
| • 1-310 | • 3-105 | • 5-108 | • 6-106 |         |



## EXHIBIT A

### Phase I Changes Completed

## **EXHIBIT B**

### **Midtown Phase II Scope of Work**

**September 20, 2017**

Phase 2 scope of work includes the health and safety remediation of 51 additional units. Approximately 20 of the units are miscellaneous units and require no relocation or a very short hotel stay. These include minor problems relating to water damage or mold in contained areas that can be isolated and repaired.

There are approximately 30 units that include 10 category 1 where high mold counts have been noted by the project consultant Healthy Building Science or 20 miscellaneous units where mold counts are not high but there is significant visible water damage.

This includes parts of kitchen walls crumbling, bathroom walls crumbling or damaged and/or headers over bedroom windows. Many units have multiple issues. This damage is typically due to balconies not properly draining, past roof leaks or plumbing problems in kitchens and bathrooms.

Because asbestos is contained in the sheetrock, in these cases the asbestos can become friable and therefore has to be addressed. This also requires that units be put under containment, which increases time and cost. Another large problem is old carpet more than 20 years old. Many times, this carpet has not been cleaned and maintained and contains mold spores or high concentrations of dirt. This typically creates higher mold readings in a unit.

The scope of work for this phase includes

1. Survey each unit to determine an individual scope of work.
2. Prepare a scope of work document for residents to review work in their unit and approve work in order to insure that there is agreement.
3. Prepare a schedule determining time needed in each unit and its fit in overall schedule
4. Work with relocation coordinator to temporarily relocate residents where required to a vacant unit while work is complete.
5. Oversee environmental consultant to test and clear each unit.
6. Manage contractor to complete scope of work based on the survey.
7. Move resident back to unit.

**EXHIBIT C**  
**PHASE II BUDGET**

<b>Phase II</b>	
Unit Construction/Rehab	2,200,000.00
Owner Work (Hardware & Awnings)	25,000.00
Hard Cost Contingency	640,000.00
<b><i>Total Construction Costs</i></b>	<b><i>2,865,000.00</i></b>
Architect	75,000.00
Phase I and II reports	60,000.00
<b><i>Total A &amp; E</i></b>	<b><i>135,000.00</i></b>
Developer Legal Counsel	20,000.00
Relocation	420,000.00
Entitlement/Permit Fees	10,000.00
<b><i>Soft Cost Subtotal</i></b>	<b><i>450,000.00</i></b>
Developer Overhead & Profit	220,000.00
<b><i>Total Developers Costs</i></b>	<b><i>220,000.00</i></b>
<b><i>TOTAL DEVELOPMENT COST:</i></b>	<b><i>3,670,000.00</i></b>



## EXHIBIT D

### GOVERNMENTAL REQUIREMENTS

1. Prevailing Wages. Every contract for the rehabilitation or construction of housing assisted with CDBG Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Dept. of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), as supplemented by Dept. of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Premises, including portions other than the assisted Units.
2. Environmental Review. The Premises must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.
3. Disability Access. Mercy must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Mercy is responsible for determining which disability access Laws apply to the Premises, including those applicable due to the use of Funds. In addition, before occupancy of the Premises, Mercy must provide to the City a written reasonable accommodations policy that indicates how Mercy will respond to requests by disabled individuals for accommodations in Units and common areas of the Premises.
4. Lead-Based Paint. Mercy must satisfy any applicable requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Mercy must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.
6. Relocation. Mercy must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24, the requirements of 24 CFR § 92.353 (Displacement, relocation, and acquisition) and similar Laws.
7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), as incorporated into MOHCD's Section 3 Plan. To ensure compliance with those requirements, Mercy must include the provisions attached as Exhibit E in its contract with the general contractor for the Scope of Work. Mercy will be responsible to the City for ensuring compliance with the requirements listed on Exhibit D.

8. Submitting False Claims; Monetary Penalties. Mercy or any grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in Section 21.35 of the San Francisco Administrative Code. Mercy or any grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if Mercy, grantee, contractor, subcontractor or consultant:
- (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
  - (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
  - (c) conspires to defraud the City by getting a false claim allowed or paid by the City;
  - (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or
  - (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.
9. Prohibition on Use of Public Funds for Political Activities. Mercy shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Mercy is subject to the enforcement and penalty provisions in Chapter 12G.



## EXHIBIT E

### INSURANCE REQUIREMENTS

Subject to approval by the City's Risk Manager of the insurers and policy forms, Mercy must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement until the Completion Date at no expense to the City:

1. Mercy, Contractors.

(a) to the extent Mercy or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits 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 explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Mercy's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Mercy shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Mercy's officers and employees against dishonesty with respect to the Funds 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, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by Mercy's contractor, provided that the policy must be "claims made" coverage and Mercy must require Mercy's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.



2. Property Insurance. Mercy must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-Premises basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Mercy as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Mercy for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.

3. General Requirements.

(a) General and automobile liability policies of Mercy, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Mercy hereby waives all rights of subrogation against the City to the extent of any loss covered by Mercy's insurance, except to the extent subrogation would affect the scope or validity of insurance.

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

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) 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.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Mercy must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

### First Source Hiring Requirements and Numerical Goals

Mercy's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan.

#### 1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.



2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.

## **FIFTH AMENDMENT TO MANAGEMENT & LEASE AGREEMENT**

This Fifth Amendment to Management and Lease Agreement ("Fifth Amendment") is made as of ~~September 17~~, 2018, in San Francisco, California, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("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. City and Mercy are parties to that certain Management and Lease Agreement dated as of January 31, 2014, as amended by an Amendment to Management and Lease Agreement dated as of May 1, 2014 ("First Amendment"); as further amended by a Second Amendment to Management & Lease Agreement dated as of March 27, 2015 ("Second Amendment"); as further amended by a Third Amendment to the Management & Lease Agreement dated as of November 17, 2016 (the "Third Amendment"); and as further amended by a Fourth Amendment to Management & Lease Agreement dated as of November 16, 2017 (the "Fourth Amendment") together with the First Amendment, Second Amendment, Third Amendment and Fourth Amendment collectively, the "Lease"), pursuant to which Mercy leases and manages the Premises. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Lease.

B. In reviewing the Lease, the City has determined a number of Articles require amendment related to changes in the "Rent Modification Program."

C. Pursuant to the Third Amendment and Fourth Amendment, the City provided \$8,670,000 of CDBG funds to Mercy for Changes approved by the City for certain health and safety improvements to the Site ("Phases I and II"). Mercy has completed Phases I and II, and upon further inspection, Mercy has determined that certain additional Changes to the Improvements are necessary for the health, safety, and benefit of the Site and the residents ("Phase III Changes), and the City has approved and has agreed to fund the Phase III Changes, subject to certain terms and conditions.

D. The parties now desire to enter into this Fifth Amendment to memorialize the administrative changes and set forth the scope of work for the Phase III Changes and the terms and conditions of their agreement in connection therewith and to otherwise amend the Lease as more particularly set forth below.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Mercy hereby agree as follows:

#### **1. Amendments to Lease.**

a. **Definitions.** Section 1.13 (Rental Credit Program) is hereby deleted and replaced with the following:

**1.13 Rent Modification 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.

Any reference in the Lease to the defined term "Rental Credit Program" is hereby replaced with the defined term "Rent Modification Program."

b. Section 5.06 (Rents; Rent Modification Program). Section 5.06 of the Lease is hereby amended as follows (additions in double underline and deletions in ~~strikethrough~~):

From the period commencing on the Agreement Date and ending on the date the Rental Modification ~~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 Modification ~~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 Modification ~~Credit~~ Program, Mercy shall charge rents at the rates set forth in the Rental Modification ~~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.~~

c. Article 26 (Notices and Consents). Mercy's address set forth in Article 26 is hereby deleted and replaced with the following:

Mercy Midtown Inc.  
1256 Market Street  
San Francisco, CA 94102

2. Phase III Scope of Work. As required under Article 5.10 of the Lease, the City hereby approves the Changes in the amount of \$863,115, set forth in Exhibit A, attached hereto and by this reference made a part hereof (the "Phase III Scope of Work"). The Phase III Scope of Work shall be performed in compliance with this Fifth Amendment and the Phase III Budget, set forth in Exhibit B, attached hereto and by this reference made a part hereof.

3. Definitions. The following additional definitions shall apply to this Fourth Amendment:

- a. "Disbursement" means the disbursement of all or a portion of the Funding Amount by the City.
- b. "Expenditure Request" means a written request by Mercy for a Disbursement from the Funding Amount, which must certify that the costs covered by the Expenditure Request have been paid or incurred by Mercy.

4. Funding.

- a. The City is authorized under a contract with the United States Department of Housing and Urban Development ("HUD") pursuant to Title I of the Housing and Community Development Act of 1974 (42 U.S.C. §§ 5301 *et seq.*), to distribute



Community Development Block Grant ("CDBG") funds (the "Funds") for the specific and special purpose of increasing the housing stock in the City for low- and very low-income persons. The City agrees to provide to Mercy up to \$863,115 (the "Phase III Funding Amount") of CDBG funds, set forth in the Phase III Budget attached as Exhibit B, in order to finance the Phase III Scope of Work. The Phase III Funding Amount will be disbursed according to the terms and subject to the conditions set forth in Article 5 of this Amendment, below.

- b. The provisions of 24 CFR part 84, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and 24 CFR part 570, "Community Development Block Grants" are applicable to all activities funded under this Fourth Amendment.

5. Performance of the Phase III Scope of Work. Mercy must comply with the following provisions in performing the Phase III Scope of Work.

- a. Selection Requirements. In the selection of all contractors and professional consultants for the Premises, Mercy must comply with the City's procurement requirements and procedures as described in the Contracting Manual (2006 Amendment) for Federally Funded Construction Projects Financed by the Mayor's Office of Housing, issued by MOHCD on November 18, 2002, as amended on May 22, 2007, as the same may be further amended from time to time (the "Contracting Manual"), and with the requirements of the Small Business Enterprise Program ("SBE Program") as set forth in the SBE Manual according to the procedures established by the City's Contract Monitoring Division.
- b. Plans and Specifications. Before starting any demolition, rehabilitation or construction on the Premises, Mercy must have delivered to the City, and the City must have reviewed and approved, plans and specifications and the construction contract for the Premises entered into between Mercy and Mercy's general contractor and approved by the City (the "Construction Contract"). The plans approved by the City must also be approved by the City and County of San Francisco's Department of Building Inspection (the "Department of Building Inspection") (collectively, the "Approved Plans") prior to the start of any demolition, rehabilitation or construction on the Premises. The Approved Plans must be explicitly identified in the Construction Contract. The specifications approved by the City, including the funder requirements and the technical specifications (the "Approved Specifications") must also be explicitly identified in the Construction Contract. The Construction Contract may include funder requirements not otherwise addressed in the Approved Specifications. The Contracting Manual provides further guidance regarding the City's policies for the review and approval of plans, specifications and construction contracts. After completion of the Scope of Work, Mercy must retain the Approved Plans as well as ""Scopes of Work"" for each unit, the Approved Specifications and the Construction Contract, all of which Mercy must make available to the City upon request
- c. Change Orders. Mercy may not approve or permit any change orders to the Approved Plans and Approved Specifications approved by the City without the

City's prior written consent. Mercy acknowledges that the City's approval of any change order will not constitute an agreement to provide additional funds for the Scope of Work, unless the City agrees in its sole discretion to provide additional funds for that purpose.

- d. Insurance, Bonds and Security. Notwithstanding Article 16 of the Lease, in connection with the Phase III Scope of Work Mercy must obtain and maintain, or cause to be maintained, the insurance and bonds as set forth in Exhibit E, attached hereto and by this reference incorporated herein, from the date of this Amendment until the Completion Date and deliver to the City insurance endorsements and bonds as described in Exhibit E.
- e. Commencement and Completion of Premises. Unless otherwise extended in writing by the City, Mercy must: (a) commence demolition, rehabilitation or construction by a date no later than May 1, 2018; and (b) complete the Changes by a date no later than August 15, 2018, in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the Department of Building Inspection, and an architect's or engineer's certificate of completion (the "Completion Date").
- f. Rehabilitation/Construction Standards. All rehabilitation or construction must be performed in a first class manner, substantially in accordance with final plans and specifications approved by the City and in accordance with all applicable codes.

6. Demolition, Rehabilitation or Construction Disbursements. The City's obligation to approve any capital expenditure is subject to Mercy's satisfaction of the following conditions precedent.

- a. Mercy must have delivered to the City an Expenditure Request in form and substance satisfactory to the City, together with: (i) copies of invoices, contracts or other documents covering all amounts requested; (ii) a line item breakdown of costs to be covered by the Expenditure Request; and (iii) copies of checks issued to pay expenses covered in the previous Expenditure Request. The City may grant or withhold its approval of any line item contained in the Expenditure Request that, if funded, would cause it to exceed the budgeted line item as previously approved by the City. Additionally, the City must approve all requested reallocations of Funds for line items previously approved by the City.
- b. No breach of the Lease may have occurred that remains uncured as of the date of the Expenditure Request.
- c. With respect to any Expenditure Request that covers rehabilitation or construction costs, Mercy must have certified to the City that the Premises complies with the labor standards set forth in Exhibit C, Section 1, if applicable.



7. Limitations on Approved Expenditures. The City may refuse to approve any expenditure: (a) during any period in which a breach of the Lease by Mercy remains uncured, or during the pendency of an uncured breach; or (b) for disapproved, unauthorized or improperly documented expenses. The City is not obligated to approve expenditure of the full Funding Amount unless approved Expenditure Requests support disbursement of the full Funding Amount, and in no event may the aggregate amount of all Funds disbursed to Mercy under this Agreement exceed the Funding Amount.

8. Retention.

- a. In addition to the other conditions to disbursements, Mercy acknowledges that the amount of hard costs or tenant improvements costs included in any Expenditure Request associated with rehabilitation or construction, when added to previously approved costs, may not exceed ninety percent (90%) of the approved budgeted costs on a line item basis.
- b. The remaining percentage of hard costs or tenant improvement costs associated with rehabilitation or construction may be held by the City (the "Retention") and may be released only upon satisfaction of all requirements listed in the Construction Manager's Checklist for Release of Retention included in the Contracting Manual and, other than release of Retention to Early Retention Release Contractors, each of the following conditions, unless otherwise approved in writing by the City: (a) completion of rehabilitation or construction of the Scope of Work in accordance with the plans and specifications approved by the City, as evidenced by a certificate of occupancy or equivalent certification provided by the City's Department of Building Inspection, and an architect's or engineer's certificate of completion; (b) timely recordation of a notice of completion; and (c) either expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices or recordation of the lien releases of all contractors, subcontractors and suppliers who provided labor or materials for the Phase III Scope of Work.

9. Authorization for Amendment. Because the Lease is a month-to-month lease, the Director of Property has the authority to approve and enter into this Fifth Amendment without the approval of the City's Board of Supervisors or Mayor.

10. References. No reference to this Fifth Amendment is necessary in any instrument or document at any time referring to the Lease. Any reference to the Lease shall be deemed a reference to the Lease as amended hereby.

11. Applicable Law. This Fifth Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.


12. Further Instruments. The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Fifth Amendment.

13. Miscellaneous. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease as amended by this Fifth Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes and conceals any and all previous negotiations, agreements, or understandings, if any, regarding the matters contained herein. The execution of this Fifth Amendment shall not constitute a waiver or relinquishment of any rights that City may have relating to the Lease. Mercy and City hereby ratify and confirm all of the provisions of the Lease as amended by this Fifth Amendment. This Fifth Amendment may be executed in any number of counterparts, all of which will constitute but one agreement.


*[Signatures on following page]*

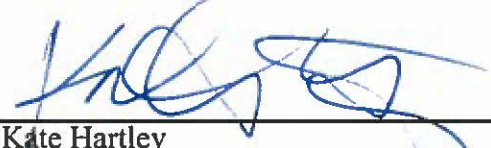
In witness whereof, the parties hereto have executed this Fifth Amendment as of the date written above.

MERCY: Mercy Midtown, Inc.,  
a California nonprofit public benefit corporation

By:   
Name: Jennifer Dolin  
Its: Vice President

LANDLORD: CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation

By:   
Andrico Penick 9/13/14.  
Its: Acting Director of Property

By:   
Kate Hartley  
Director, Mayor's Office of Housing and  
Community Development

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By:   
Deputy City Attorney

**EXHIBIT A**  
**PHASE III SCOPE OF WORK**

Midtown Phase III Health and Safety Work  
2-Apr-18

Construction

Repair frame and replace trash room doors per Fire Dept	52,500	
Remediate storage closets and install sprinkler heads per fire department(82 closets)	173,000	Total cost \$346,000. Absorbed half in current budget
Improve building and unit signage	25,000	
Repair fire separation doors	45,000	
Install smoke and CO2 detectors in units	26,000	
New unit health and safety work (10)	-	
Additional work in units after completion (30)	-	
Install extinguishers in hallways	260,000	
Install ramp at building 4	-	
Additional contractor general conditions to July 15	90,000	
Contingency 10%	73,150	
Construction Subtotal	744,650	
Phase III Healthy Building Science	20,000	
Architecture	-	
Developer Overhead	78,465	
Hazardous Waste Fees	20,000	
<b>TOTAL PHASE III FUNDS</b>	<b>863,115</b>	



**EXHIBIT B**  
**PHASE III BUDGET**



## EXHIBIT C

### GOVERNMENTAL REQUIREMENTS

1. Prevailing Wages. Every contract for the rehabilitation or construction of housing assisted with CDBG Funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-5), as supplemented by Dept. of Labor regulations (29 CFR part 5) to all laborers and mechanics employed in the development of any part of the housing, and contracts involving their employment will be subject to the provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-332), as supplemented by Dept. of Labor regulations (29 CFR part 5). The prevailing wage requirements of this Section apply to all laborers and mechanics employed in the development of the Premises, including portions other than the assisted Units.
2. Environmental Review. The Premises must meet the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. § 4321), related authorities listed at 24 CFR Section 51.100 and parts 50 and 58 and the California Environmental Quality Act (Cal. Pub. Res. Code §§ 2100 *et seq.*) and implementing regulations.
3. Disability Access. Mercy must comply with all applicable disability access Laws, including the Americans with Disabilities Act (42 U.S.C. §§ 1201 *et seq.*), Section 504 of the Rehabilitation Act (29 U.S.C. § 794) and the Fair Housing Amendments Act (42 U.S.C. §§ 3601 *et seq.*). Mercy is responsible for determining which disability access Laws apply to the Premises, including those applicable due to the use of Funds. In addition, before occupancy of the Premises, Mercy must provide to the City a written reasonable accommodations policy that indicates how Mercy will respond to requests by disabled individuals for accommodations in Units and common areas of the Premises.
4. Lead-Based Paint. Mercy must satisfy any applicable requirements of Chapter 36 of the San Francisco Building Code ("Work Practices for Exterior Lead-Based Paint") and the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4821 *et seq.*) and implementing regulations at 24 CFR part 35. Mercy must also comply with the provisions contained in 17 CCR 350000 *et seq.*, and 8 CCR 1532.1 and all other applicable Laws governing lead-based hazards.
6. Relocation. Mercy must meet any applicable requirements of the California Relocation Assistance Act (Cal. Gov. Code §§ 7260 *et seq.*) and implementing regulations in Title 25, Chapter 6 of the California Administrative Code in addition to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §§ 4601 *et seq.*) and implementing regulations at 49 CFR part 24, the requirements of 24 CFR § 92.353 (Displacement, relocation, and acquisition) and similar Laws.
7. Low-Income Hiring Requirements. The use of Funds triggers compliance with certain hiring requirements imposed by the City's First Source Hiring Ordinance (S.F. Admin. Code Chapter 83), as incorporated into MOHCD's Section 3 Plan. To ensure compliance with those requirements, Mercy must include the provisions attached as Exhibit E in its contract with the



general contractor for the Scope of Work. Mercy will be responsible to the City for ensuring compliance with the requirements listed on Exhibit C.

8. Submitting False Claims; Monetary Penalties. Mercy or any grantee, contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in Section 21.35 of the San Francisco Administrative Code. Mercy or any grantee, contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if Mercy, grantee, contractor, subcontractor or consultant:

- (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval;
- (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by the City;
- (c) conspires to defraud the City by getting a false claim allowed or paid by the City;
- (d) knowingly makes, uses or causes to be made or used a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the City; or
- (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Prohibition on Use of Public Funds for Political Activities. Mercy shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Mercy is subject to the enforcement and penalty provisions in Chapter 12G.

## EXHIBIT E

### INSURANCE REQUIREMENTS

Subject to approval by the City's Risk Manager of the insurers and policy forms, Mercy must obtain and maintain, or caused to be maintained, the insurance and bonds as set forth below from the date of this Agreement until the Completion Date at no expense to the City:

1. Mercy, Contractors.

(a) to the extent Mercy or its contractors and subcontractors have "employees" as defined in the California Labor Code, workers' compensation insurance with employer's liability limits not less than One Million Dollars (\$1,000,000) each accident, injury or illness;

(b) commercial general liability insurance, with limits 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 explosions, collapse, or underground hazards;

(c) business automobile liability insurance, with limits not less than One Million Dollars (\$1,000,000) each occurrence, combined single limit for bodily injury and property damage, including owned, hired and non-owned auto coverage, as applicable;

(d) professional liability insurance of no less than One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) annual aggregate limit covering all negligent acts, errors and omissions of Mercy's architects, engineers and surveyors. If the professional liability insurance provided by the architects, engineers, or surveyors is "Claims made" coverage, Mercy shall assure that these minimum limits are maintained for no less than three (3) years beyond completion of the constructions or remodeling. Any deductible over Fifty Thousand Dollars (\$50,000) each claim must be reviewed by Risk Management; and

(e) a crime policy or fidelity bond covering Mercy's officers and employees against dishonesty with respect to the Funds 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, including the City as additional obligee or loss payee;

(f) pollution liability and/or asbestos pollution liability applicable to the work being performed with a limit no less than One Million Dollars (\$1,000,000) per claim or occurrence and Two Million Dollars (\$2,000,000) annual aggregate per policy. This coverage shall be endorsed to include Non-Owned Disposal Site coverage. This policy may be provided by Mercy's contractor, provided that the policy must be "claims made" coverage and Mercy must require Mercy's contractor to maintain these minimum limits for no less than three (3) years beyond completion of the construction or remodeling.

2. Property Insurance. Mercy must maintain, or cause its contractors and property managers, as appropriate for each, to maintain, insurance and bonds as follows:

(a) Prior to construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all improvements prior to commencement of construction and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(b) During the course of construction:

(i) Builder's risk insurance, special form coverage, excluding earthquake and flood, for one hundred percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor, including coverage in transit and storage off-site; the cost of debris removal and demolition as may be made reasonably necessary by such covered perils, resulting damage and any applicable law, ordinance or regulation; start up, testing and machinery breakdown including electrical arcing, copy of the applicable endorsement to the Builder's Risk policy, if the Builder's Risk policy is issued on a declared-Premises basis; and with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City and all subcontractors as loss payees.

(ii) Performance and payment bonds of contractors, each in the amount of One Hundred Percent (100%) of contract amounts, naming the City and Mercy as dual obligees or other completion security approved by the City in its sole discretion.

(c) Upon completion of construction:

(i) Property insurance, excluding earthquake and flood, in the amount no less than One Hundred Percent (100%) of the replacement value of all completed improvements and City property in the care, custody and control of Mercy or its contractor.

(ii) Boiler and machinery insurance, comprehensive form, covering damage to, loss or destruction of machinery and equipment located on the Site that is used by Mercy for heating, ventilating, air-conditioning, power generation and similar purposes, in an amount not less than one hundred percent (100%) of the actual replacement value of such machinery and equipment with a deductible not to exceed Ten Thousand Dollars (\$10,000) each loss, including the City as loss payee.



3. General Requirements.

(a) General and automobile liability policies of Mercy, contractors, commercial tenants and property managers must include the City, including its Boards, commissions, officers, agents and employees, as an additional insured by endorsement acceptable to the City.

(b) All policies required by this Agreement must be endorsed to provide no less than thirty (30) days' written notice to the City before cancellation or intended non-renewal is effective.

(c) With respect to any property insurance, Mercy hereby waives all rights of subrogation against the City to the extent of any loss covered by Mercy's insurance, except to the extent subrogation would affect the scope or validity of insurance.

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

(e) Any and all insurance policies called for herein must contain a clause providing that the City and its officers, agents and employees will not be liable for any required premium.

(f) 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.

(g) All liability policies must provide that the insurance is primary to any other insurance available to the additional insureds with respect to claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought and that an act of omission of one of the named insureds that would void or otherwise reduce coverage will not void or reduce coverage as to any other insured, but the inclusion of more than one insured will not operate to increase the insurer's limit of liability.

(h) Any policy in a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in the general annual aggregate limit must be in amounts that are double the occurrence or claims limits specified above.

(i) All claims based on acts, omissions, injury or damage occurring or arising in whole or in part during the policy period must be covered. If any required insurance is provided under a claims-made policy, coverage must be maintained continuously for a period ending no less than three (3) years after recordation of a notice of completion for builder's risk or the Compliance Term for general liability and property insurance.

(j) Mercy must provide the City with copies of endorsements for each required insurance policy and make each policy available for inspection and copying promptly upon request.

### First Source Hiring Requirements and Numerical Goals

Mercy's use of Funds triggers the following hiring requirements imposed by the City's First Source Hiring Ordinance (San Francisco Administrative Code Chapter 83) as incorporated into MOHCD's Section 3 Plan.

#### 1. Section 3 Requirements.

(a) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u ("Section 3"), based on Borrower's receipt of City funds under MOHCD's Section 3 Plan. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3 be directed to low-and very low-income persons, particularly persons who are recipients of HUD assistance for housing, to the greatest extent feasible.

(b) The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

(c) The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this Section 3 clause, and to post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference and set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions and the qualifications for each, the name and location of the person(s) taking applications for each of the positions and the anticipated date work will begin.

(d) The contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135 and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

(e) The contractor will certify that any vacant employment positions, including training positions, that are filled: (i) after the contractor is selected but before the contract is executed; and (ii) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

(f) Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default and debarment or suspension from future HUD assisted contracts.

2. Recommended Minimum Numerical Goals. Contractors may demonstrate compliance with the "greatest extent feasible" requirement of Section 3 by meeting the numerical goals set forth below for training, employment and contracting opportunities to Section 3 residents and Section 3 business concerns, which represent minimum numerical goals.

(a) Training and Employment of Section 3 Residents (24 CFR § 135.30(b)). Contractors and subcontractors may demonstrate compliance by committing to employ Section 3 residents as thirty percent (30%) of the aggregate number of new hires (full-time employees for permanent, temporary or seasonal employment) and an overall goal of thirty percent (30%) of total work hours for the entire project.

(b) Contracts with Section 3 Business Concerns (24 CFR § 135.30). Contractors and subcontractors may demonstrate compliance with the requirements of this part by committing to award to Section 3 business concerns:

(i) At least ten percent (10%) of the total dollar amount of all Section 3 covered contracts for building trades work arising in connection with housing rehabilitation, housing construction and other public construction; and

(ii) At least three percent (3%) of the total dollar amount of all other Section 3 covered contracts.



BOARD of SUPERVISORS



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## MEMORANDUM

TO: Sailaja Kurella, Director and Purchaser, Office of Contract Administration

FROM: Victor Young, Assistant Clerk *Victor Young*

DATE: Jan 13, 2024

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed Ordinance:

File No. 241207

Ordinance exempting Midtown Park Apartments, located at 1415 Scott Street, from construction contracting requirements in Administrative Code, Chapter 6, but requiring compliance with the prevailing wage and apprenticeship requirements of Administrative Code, Section 23.61; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.

If you have comments or reports to be included with the file, please forward them to Victor Young at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: [victor.young@sfgov.org](mailto:victor.young@sfgov.org).

c. Taraneh Moayed, Office of Contract Administration



# City and County of San Francisco

## Master Report

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

<b>File Number:</b> 241207	<b>File Type:</b> Ordinance	<b>Status:</b> 30 Day Rule
<b>Enacted:</b>		<b>Effective:</b>
<b>Version:</b> 1	<b>In Control:</b> Rules Committee	
<b>File Name:</b> Midtown Park Apartments - 1415 Scott Street - Exempting Midtown Park Apartments from Certain Construction Contracting Requirements	<b>Date Introduced:</b> 12/17/2024	
<b>Requester:</b>	<b>Cost:</b>	<b>Final Action:</b>
<b>Comment:</b>	<b>Title:</b> Ordinance exempting Midtown Park Apartments, located at 1415 Scott Street, from construction contracting requirements in Administrative Code, Chapter 6, but requiring compliance with the prevailing wage and apprenticeship requirements of Administrative Code, Section 23.61; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1.	
<b>Sponsors:</b> Mayor; Melgar and Preston		

### History of Legislative File 241207

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	12/17/2024	ASSIGNED UNDER 30 DAY RULE	Rules Committee	01/16/2025	





## CEQA Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

<b>Project Address</b>		<b>Block/Lot(s)</b>
Midtown Park Apartments		1099031
<b>Case No.</b>		<b>Permit No.</b>
2024-007686PRJ		
<input type="checkbox"/> <b>Addition/ Alteration</b>	<input type="checkbox"/> <b>Demolition (requires HRE for Category B Building)</b>	<input type="checkbox"/> <b>New Construction</b>
<b>Project description for Planning Department approval.</b> Midtown Park Apartments ("Midtown") is a 140-unit multifamily rental housing development in Western Addition owned by the City. Midtown was built in 1962 and contains 140 units in six (6) buildings. In 2014 or thereafter, one (1) unit was turned into a property management office and community room. There are laundry rooms in two buildings. Of the 139 units (140 units excluding the property management office and community room), 105-units are currently occupied. Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. Some key health and safety items are in violation of the current code. Because of lack of adequate fire safety buildings are becoming difficult to insure. Failure of one system could be catastrophic with death, injury and/or large displacement. Extremely low rents of existing tenants cause an annual operations gap, and this operations gap is filled by Mayor's Office of Housing and Community Development ("MOHCD"). Over the next five years, MOHCD or its property management agent, proposes to repair or replace failing systems. Depending on available funds, MOHCD or its property management agent and the property management's vendors would repair or replace failing systems over five years. All six (6) buildings would undergo repairs or replacement of the following systems: • FULL PROJECT DESCRIPTION ATTACHED		

### EXEMPTION TYPE

<b>The project has been determined to be exempt under the California Environmental Quality Act (CEQA).</b>	
<input checked="" type="checkbox"/>	<b>Class 1 - Existing Facilities. (CEQA Guidelines section 15301)</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	<b>Class 3 - New Construction. (CEQA Guidelines section 15303)</b> Up to three new single-family residences or six dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	<b>Class 32 - In-Fill Development. (CEQA Guidelines section 15332)</b> New Construction of seven or more units or additions greater than 10,000 sq. ft. and meets the conditions described below: (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations. (b) The proposed development occurs within city limits on a project site of no more than 5 acres substantially surrounded by urban uses. (c) The project site has no value as habitat for endangered rare or threatened species. (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality. (e) The site can be adequately served by all required utilities and public services.
<input type="checkbox"/>	<b>Other _____</b>
<input type="checkbox"/>	<b>Common Sense Exemption (CEQA Guidelines section 15061(b)(3)).</b> It can be seen with certainty that there is no possibility of a significant effect on the environment.

## ENVIRONMENTAL SCREENING ASSESSMENT

Comments:

Planner Signature: Don Lewis

## PROPERTY STATUS - HISTORIC RESOURCE

PROPERTY IS ONE OF THE FOLLOWING:

<input type="checkbox"/>	<b>Category A:</b> Known Historical Resource.
<input checked="" type="checkbox"/>	<b>Category B:</b> Potential Historical Resource (over 45 years of age).
<input type="checkbox"/>	<b>Category C:</b> Not a Historical Resource or Not Age Eligible (under 45 years of age).

## PROPOSED WORK CHECKLIST

Check all that apply to the project.


<input type="checkbox"/>	<b>Change of use and new construction.</b> Tenant improvements not included.
<input checked="" type="checkbox"/>	<b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	<b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> .
<input type="checkbox"/>	<b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	<b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	<b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	<b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	<b>Addition(s)</b> not visible from any immediately adjacent public right-of-way for 150 feet in each direction; or does not extend vertically beyond the floor level of the top story of the structure, or does not cause the removal of architectural significant roofing features.
<input type="checkbox"/>	<b>Façade or storefront alterations</b> that do not remove, alter, or obscure character -defining features.
<input type="checkbox"/>	<b>Restoration</b> based upon documented evidence of a building's historic condition , such as historic photographs, plans, physical evidence, or similar buildings.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed.
<input checked="" type="checkbox"/>	Project involves scope of work listed above.

## ADVANCED HISTORICAL REVIEW

Check all that apply to the project.

<input type="checkbox"/>	<b>Reclassification of property status.</b> ( <i>Attach HRER Part I relevant analysis; requires Principal Preservation Planner approval</i> ) <input type="checkbox"/> Reclassify to Category A <input type="checkbox"/> Reclassify to Category C <input type="checkbox"/> Lacks Historic Integrity <input type="checkbox"/> Lacks Historic Significance
<input type="checkbox"/>	Project involves a <b>known historical resource (CEQA Category A)</b>
<input type="checkbox"/>	Project does not substantially impact character-defining features of a historic resource (see Comments)
<input type="checkbox"/>	Project is compatible, yet differentiated, with a historic resource.
<input type="checkbox"/>	Project consistent with the Secretary of the Interior Standards for the Treatment of Historic Properties
<b>Note: If ANY box above is checked, a Preservation Planner MUST sign below.</b>	
<input type="checkbox"/>	<b>Project can proceed with EXEMPTION REVIEW.</b> The project has been reviewed by the Preservation Planner and can proceed with exemption review.
<b>Comments by Preservation Planner:</b>	
<b>Preservation Planner Signature:</b>	

## EXEMPTION DETERMINATION

	<b>No further environmental review is required. The project is exempt under CEQA. There are no unusual circumstances that would result in a reasonable possibility of a significant effect.</b>	
	<b>Project Approval Action:</b> Building Permit	<b>Signature:</b> Don Lewis 08/23/2024
	If discretionary review before the planning commission is requested, the discretionary review hearing is the approval action for the project.	
<p>Supporting documents are available for review on the San Francisco Property Information Map, which can be accessed at <a href="https://sfplanninggis.org/pim/">https://sfplanninggis.org/pim/</a>. Individual files can be viewed by clicking on the Planning Applications link, clicking the "More Details" link under the project's environmental record number (ENV) and then clicking on the "Related Documents" link.</p> <p>Once signed and dated, this document constitutes an exemption pursuant to CEQA Guidelines and chapter 31 of the San Francisco Administrative Code. Per chapter 31, an appeal of an exemption determination to the Board of Supervisors shall be filed within 30 days after the approval action occurs at a noticed public hearing, or within 30 days after posting on the planning department's website (<a href="https://sfplanning.org/resource/ceqa-exemptions">https://sfplanning.org/resource/ceqa-exemptions</a>) a written decision or written notice of the approval action, if the approval is not made at a noticed public hearing.</p>		

## Full Project Description

Midtown Park Apartments ("Midtown") is a 140-unit multifamily rental housing development in Western Addition owned by the City. Midtown was built in 1962 and contains 140 units in six (6) buildings. In 2014 or thereafter, one (1) unit was turned into a property management office and community room. There are laundry rooms in two buildings.

Of the 139 units (140 units excluding the property management office and community room), 105-units are currently occupied. Since Midtown's initial construction, no major renovation has occurred, and major systems are failing. Some key health and safety items are in violation of the current code. Because of lack of adequate fire safety buildings are becoming difficult to insure. Failure of one system could be catastrophic with death, injury and/or large displacement. Extremely low rents of existing tenants cause an annual operations gap, and this operations gap is filled by Mayor's Office of Housing and Community Development ("MOHCD").

Over the next five years, MOHCD or its property management agent, proposes to repair or replace failing systems. Depending on available funds, MOHCD or its property management agent and the property management's vendors would repair or replace failing systems over five years. All six (6) buildings would undergo repairs or replacement of the following systems:

- Fire Alarm
- Fire Sprinklers
- Heaters/Hot Water
- Structural upgrades
- Roof
- Windows
- Balcony
- Paint of exterior and interior units

In addition to the above, if funding allows, the project would add a laundry room at one building and another between 2 buildings.

The City, working through MOHCD, has three goals it hopes to achieve with the repair and replacement plan for Midtown. The goals are (1) bring Midtown to code and mitigate risk from health and safety issues; (2) rent vacant units after repairs at or near market rates to eliminate ongoing City operating subsidy through MOHCD to Midtown, and (3) discourage, through lease enforcement, new tenants from installing and using in-unit washers and dryers.