

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:

I. 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 1st 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 1st, 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.

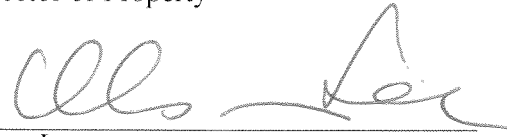
In witness whereof, the parties hereto have executed this Second Amendment as of the date written above.

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

By: 
Its: Office 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.

