

ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT
(Midtown Apartments)

THIS ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT (the "Agreement") is dated January 1, 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.

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[signatures on following pages]

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

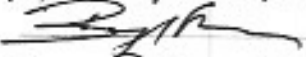
ASSIGNOR:

Mercy Midtown, Inc.
a California nonprofit public benefit corporation

By: 
Barbara Gualco, Vice President


ASSIGNEE:


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


By: Barry Levy
Its: President

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

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

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

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: 
Deputy City Attorney

EXHIBIT A TO ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT

THIS EXHIBIT A TO THE ASSIGNMENT, ASSUMPTION, AND CONSENT AGREEMENT ("Exhibit A") is made between the City of San Francisco ("Owner"), on the one hand and Kalco Properties, Inc., and its subsidiary Midtown Park Apartments-Kalco Properties LLC, a California limited liability company (collectively "Manager") on the other. In the event of any conflict between this Exhibit A and the Lease referenced in the Assignment, Assumption and Consent Agreement (the "Agreement"), this Exhibit A will govern in all respects. The terms of this Exhibit A are intended to and shall be a part of any amendment of the Lease and/or any new management agreement entered into by and between the Parties. The effective date of this Exhibit A shall be January 1, 2020 provided, however, that neither the Agreement nor the terms of this Exhibit A shall become effective until the Agreement is executed by all Parties.

1. **Appointment and Acceptance.** Owner hereby appoints Manager as its manager to lease and manage the Project described in Paragraph 2. Such appointment is made subject to and on all of the terms and conditions of the Lease except as modified by this Exhibit A and the Agreement to which this Exhibit A is attached. Manager accepts the appointment and agrees to furnish the services of its organization to Owner for the leasing and management of the Project.

2. **Description of Project.** The property to be leased and managed by the Manager under the Agreement is a housing development, consisting of the land, buildings and other improvements, which make up 54,918 square feet of land, with 6 buildings containing 139 residential dwelling units commonly known as the Midtown Park Apartments (the "Project"). The Project is further described as follows:

Name: Midtown Park Apartments

Address: 1415 Scott Street, 1450 Divisadero, 2121 Geary Blvd., 2141 Geary Blvd., 2040 O'Farrell Street, and 2060 O'Farrell Street

City: San Francisco, CA, 94115

No. of Dwelling Units: 139

3. **Prior Acts Release.** Owner acknowledges that Manager shall not be responsible for any failure, in whole or in part, whether negligent or intentional, of Owner or its prior managers or managers, including Mercy Midtown Inc., a California nonprofit public benefit corporation, to: (i) have complied with any and all terms of any Housing Assistance Programs in effect in connection with this Project; (ii) to have complied with federal, state and/or local laws and ordinances governing the Project; and/or (iii) in connection with the leasing, demolition, construction, improvement, maintenance, repair, operation, management and handling of rent, reserves, operating funds, accounts receivable and accounts payable associated with the Project ("Prior Acts"). Owner hereby releases Manager if full of and from any Prior Acts and further agrees to defend, indemnify and hold Manager harmless of and from any claims, losses, causes of action, litigation or other legal proceedings, penalties, and/or damages arising out of or related to any such Prior Acts.

4. **Information.** As soon as possible, Owner will furnish the Manager with all available information relating to the Project including but not limited to all salient and necessary documents and information governing or related to the Project. In reliance on this information and after

inspection by competent personnel, Manager will thoroughly familiarize itself with the character, location, construction, layout, plan and operation of the Project.

5. Scope of Retention. Assuming adequate funding which shall be the sole responsibility of Owner to provide, Manager shall operate, maintain and manage the Project as a residential housing development and for no other purpose and shall perform the following services in connection with its retention and management of the Project:

(a) Rentals. The Manager will offer for rent and will rent, as applicable, the dwelling units, parking spaces, commercial space and/or other rental facilities and concessions in the Project. The Manager's duties relating to rentals shall include but not be limited to the following:

(i) The Manager will show the premises to prospective tenants.

(ii) The Manager will take and process applications for rentals. If an application is rejected, the applicant will be told the reason for the rejection, and the rejected application, with reason(s) for rejection noted thereon, will be kept on file for one (1) year, or such longer period of time as may be required to comply with any applicable Program Requirements. A current list of prospective tenants will be maintained.

(iii) The Manager will prepare all dwelling leases and parking permits and will execute the same in the name of Owner and on behalf of Owner. All dwelling leases will be on a form and on such terms as may be approved by those who administer any applicable Program Requirements and as may be otherwise satisfactory to Owner. No dwelling units, other than the resident manager's unit, if applicable, shall be occupied without a lease on the approved form.

(iv) The Manager will obtain and will furnish Owner with rent and income schedules, as from time to time approved by those who administer any applicable Program Requirements, e.g., showing HAP Contract rents, fair market rents and basic rents of all Project dwelling units and income data pertinent to determinations of tenant eligibility and tenant rents and other charges for facilities and services. So long as the Project is subject to any Program Requirements, in no event will such approved fair market rents and other charges be exceeded. Eligibility for dwelling rents that are less than fair market rents, and the amount of such lesser rents, will be determined in accordance with applicable Program Requirements and will otherwise be satisfactory to Owner. If the Project is no longer subject to any Program Requirements, Manager will obtain and furnish Owner with fair market rental information, supported by an appraisal performed by a certified appraiser, for all units not less frequently than once each calendar year.

(v) The Manager will counsel all prospective tenants regarding eligibility for dwelling rents that are less than fair market rents, and will prepare and verify eligibility certifications and recertifications, in accordance with applicable Program Requirements.

(vi) The Manager will negotiate third party vendor agreements and will execute the same with the prior written approval of Owner.

(vii) The Manager will collect, deposit, and disburse security deposits, if required, in accordance with the terms of each tenant's lease. The amount of each security deposit

will be as specified by any applicable Program Requirements, or as may otherwise be satisfactory to Owner. Security deposits will be deposited by the Manager in an account separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured by an agency of the United States government, and which is otherwise acceptable to Owner. This account will be carried in Owner's name and designated of record as Security Deposit Account. Owner shall control who may draw on such funds.

(b) Collection of Rents and Other Receipts. The Manager will collect when due all rents, charges and other amounts receivable on Owner's account and use same in accordance with a budget to be approved by the City. All Project Income shall be used to pay Project Expenses and expenses associated with the operation and management of the Project and the fulfillment of all obligations of Manager under this Exhibit A, the Agreement and the Lease to the extent the Lease is not in conflict with the terms of this Exhibit A. Such receipts (except for tenants' security deposits, which will be handled as specified above will be deposited in an account, separate from all other accounts and funds, with a bank whose deposits are insured by the Federal Deposit Insurance Corporation and which is otherwise acceptable to Owner. This account will be carried in Owner's name and designated of record as Operating Account.

(c) Enforcement of Leases. The Manager will secure full compliance by each tenant with the terms of such tenant's lease. Voluntary compliance will be emphasized, and the Manager, utilizing the services of the Social Services Director, if any, will counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by the Manager, to the end that involuntary termination of tenancies may be avoided to the maximum extent consistent with sound management of the Project. Upon Owner's prior written approval, the Manager may lawfully terminate any tenancy when, in the Manager's reasonable and professional judgment, sufficient cause (including but not limited to non-payment of rent) for such termination occurs under the terms of the tenant's lease. For this purpose and subject to Owner's prior approval, the Manager is authorized to consult with legal counsel to be designated by Owner. Owner herewith gives Manager the power and authority, as Owner's manager and attorney in fact, to bring, in Owner's or Manager's own name, actions for evictions, and to execute, in Manager's own name, notices to vacate and judicial pleadings incident to such actions; provided, however, that the Manager will keep Owner informed of such actions and will follow such instructions as Owner or its legal counsel may prescribe for the conduct of any such action. Subject to Owner's prior approval of the incurrence of any of the same, attorney's fees and other necessary costs incurred in connection with such actions will be paid out of the Rental Operating Account as Project expenses.

(d) Maintenance and Repairs. Owner shall at all times be responsible for ensuring adequate funds to maintain and repair the Project including any necessary emergency repairs. Subject thereto, the Manager will cause the Project to be maintained and repaired in accordance with local codes and otherwise in a condition at all times acceptable to Owner and in conformity with applicable Program Requirements, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by Owner in addition to those contained herein. Manager's maintenance and repair duties, to be performed by third party vendors at Owner's sole expense, shall include but not be limited to the following:

(i) At Owner's expense, special attention will be given to preventive maintenance, and to the greatest extent feasible, the services of regular maintenance employees will be used.

(ii) Subject to Owner's prior approval, and at Owner's expense, the Manager will contract with qualified independent contractors for the maintenance and repair of extraordinary repairs beyond the capability of regular maintenance employees.

(iii) The Manager will systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a twenty four (24) hour basis. Complaints of a serious nature, as determined by Manager, will be reported to the Owner promptly and will be promptly investigated by Manager, who shall promptly report the results of such investigation to Owner.

(iv) Subject to the terms of this Exhibit A, at Owner's expense, the Manager is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair.

(v) Owner Approval of Expenditures. Notwithstanding any of the foregoing provisions, the prior approval of the Owner will be required for any expenditure which exceeds Three Thousand Dollars (\$3,000) in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project. In the latter event, the Manager will inform the Owner of the facts as promptly as possible.

6. Utilities and Services. In accordance with the operating budget, and at Owner's sole expense, the Manager will make arrangements for common area water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities and telephone service. Subject to the Owner's prior approval, and at Owner's sole expense, Manager will make such contracts as may be necessary to secure such utilities, services and maintenance.

7. Employees. The Manager will prescribe the number, qualifications and duties of the personnel to be regularly employed directly by Manager in the management of the Project, including maintenance, bookkeeping, clerical and other managerial employees. Prior to hiring any individual, Manager may conduct, at Owner's expense, a background check on such individual, including credit, criminal history and drug screening. All such personnel will be employees of the Manager and not of the Owner and be hired, supervised and discharged by the Manager, and the Manager shall be solely responsible for the administration of all compensation (including fringe benefits) payable to all such personnel and for all local, state and federal taxes and assessments (including but not limited to Social Security taxes, unemployment insurance and workers compensation insurance) incident to their employment. The Owner shall be responsible for all compensation and fringe benefits for all on site employees that will be paid out of the Owner's operating account and treated as a Project expense. In addition, the Owner shall provide a dwelling unit within the Project for the use of the Resident Manager and the rental value of the same will be treated as a cost to the Project.

8. **Budgets.** Annual operating budgets for the Project, will be as approved by the Owner. Except as approved in advance by the Owner or as otherwise permitted under the Agreement, annual disbursements for each type of operating expense itemized in the budget will not exceed the amount authorized by the approved budget. As soon as practicable in the fiscal year 2020 and annually thereafter, the Manager will prepare a recommended operating budget for each fiscal year and will submit the same to the Owner at least thirty (30) days before the beginning of the fiscal year. The Owner will promptly inform the Manager of changes, if any, to be made in the approved budget and the Manager will keep the Owner informed of any anticipated deviation from the receipts or disbursements stated in the approved budget. In the event Manager does not receive written approval of the annual operating budget within thirty (30) days of submission to Owner, Manager shall use the prior budget until the new annual operating budget is approved by Owner.

9. **Records and Reports.** In addition to any requirements specified by the Owner or in other provisions of the Agreement, the Manager, will have the following responsibilities with respect to records and reports:

(a) The Manager will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to applicable Program Requirements, and otherwise satisfactory to the Owner.

(b) With respect to each fiscal year ending during the term of the Agreement, the Manager at cost to the Project, will cause an annual financial report to be prepared in accordance with generally accepted accounting principles and will deliver the same to the Owner within sixty (60) days following the end of the fiscal year.

(c) The Manager will furnish such information (including occupancy reports) as may be requested by the Owner or specified by any applicable Program Requirements from time to time with respect to the financial, physical, or operational condition of the project. The Manager will timely prepare and submit to the appropriate persons such vouchers and reports as may be specified by any applicable Program Requirements.

(d) By the fifteenth (15th) day of each month, the Manager will furnish the Owner with financial statements for the previous month. Such report shall include a Comparison between Actual and Budgeted figures for receipts and disbursements, a Month and Year to Date Statement, a Balance Sheet and a Schedule of Disbursements.

(e) Upon termination or change in Project management:

(i) All accounting records maintained by the Manager, without regard to where the same are kept, shall be considered to be official Project records and shall be turned over to the Owner promptly upon termination of the Agreement or whenever a change-over occurs.

(ii) All cash, bank accounts and trust accounts shall be accounted for in writing and shall promptly be turned over to the Owner or any manager authorized by the Owner.

(iii) All other books, records, documents, files, bills and receipts then in Manager's custody relating to Manager's management of the Project and/or delivered to Manager by Owner or by Manager's predecessor, shall promptly be turned over to the Owner or any manager authorized by the Owner.

(iv) The Manager shall timely submit to the appropriate persons any financial statements specified by any applicable Program Requirements.

(v) In the event that any rent or other payments for Owner's account are received by Manager following the expiration or earlier termination of the Agreement, such payments shall be remitted to Owner promptly upon receipt of the same by Manager.

10. **Fidelity Bond.** At all times during the term of the Agreement, the Manager will furnish, at the Manager's cost, fidelity insurance in the principal sum of the higher of; (i) Three Hundred Thousand (\$300,000.00), or (ii) an amount equal to two times the projected gross monthly income for the period to be covered by such insurance. Such insurance shall protect the Owner against misapplication of Project funds by the Manager, its officers, partners, directors, managers and employees and shall otherwise be on such terms and conditions and with such insurers as are satisfactory to the Owner. If such insurance is provided on a policy which covers more than one property, it shall contain a per location endorsement for the Project to ensure that the full required coverage limit will at all times be available for the Project and will not be diluted by claims that may be made against the policy involving other properties that the Manager may manage for other owners.

11. **Bids, Discounts, Rebates, etc.** The Manager will obtain contracts, materials, supplies, utilities and services on the most advantageous terms to the Project, and is authorized to solicit bids, either formal or informal, for those items which can be obtained from more than one source. The Manager will secure and credit to the Owner all discounts, rebates or commissions obtainable with respect to purchases, service contracts, and all other transactions on the Owner's behalf.

12. **Social Service Program.** The Manager will be responsible to the Owner for carrying out the Social Services program, if any.

13. **Insurance.** The Owner will inform the Manager of insurance to be carried with respect to the Project and its operations, and the Manager will cause such insurance to be placed and kept in effect at all times. The premiums for such insurance will be a Project expense. All insurance will be placed with such companies, in such amounts and with such beneficial interest appearing thereon, as shall be acceptable to the Owner. The Manager will investigate and furnish the Owner with full reports as to all accidents, claims and potential claims relating to the Project, and will cooperate with the Owner's insurers in connection therewith.

14. **Compliance with Laws and Governmental Orders.** Manager shall comply with all laws applicable to it in the performance of its duties hereunder, including laws prohibiting discrimination in housing, employment laws (including those related to unfair labor practices), laws regarding depositing tenant security deposits and laws regarding the storage, release and disposal of hazardous materials and toxic substances by Project Employees, including without limitation, asbestos, petroleum and petroleum products. Manager shall not be responsible for

compliance with laws relating to the condition of the Project, including building, zoning, subdivision, fire and other codes or laws, and laws regulating hazardous materials or toxic substances (except for materials released by Project Employees), but Manager shall notify Owner of any violation of any such laws of which Manager becomes actually aware. Owner shall comply with all applicable laws with respect to the condition of the Project and the operation of the Project. Manager and Owner each shall notify the other of any notice of violation of law with respect to the Project that it receives from any governmental authority or any notice of violation or required corrective action that it receives from any board of fire underwriters or similar agency. Owner assumes all liability as to the quality and construction of the Project. Owner further represents and warrants that, to its knowledge, as of the Effective Date, the Project is in compliance with all applicable federal, state and local laws, rules, regulations, guidelines and ordinances, including but not limited to, the Americans with Disabilities Act, the Federal Fair Housing Act, the Federal 1990 Clean Air Act, all other federal, state and local accessibility requirements, and the applicable building code affecting the Project.

15. Legal Proceedings. Manager, or counsel retained by Manager in its sole discretion to represent it or Owner in connection with the Project or any aspect of management or operations shall be at Owner's sole expense, and Manager shall institute, in the name and at the expense of Owner, legal actions which Manager deems appropriate to collect charges, rent or other income from the Project, or to dispossess tenants or other persons in possession who default, or to cancel or terminate any lease, license or concession agreement for the breach thereof. Manager is authorized to assist Owner, or to institute and defend, on behalf of Owner and/or Manager, all legal actions related to Manager's authority and performance under the Agreement. Reasonable attorneys' fees and costs for such legal actions or legal needs associated with Owner or the Project shall be at Owner's sole expense. It is expressly acknowledged by Owner that Manager shall not be responsible for providing legal advice, tax advice or other counsel to Owner or Project Employees with respect to any Project related matters, and any recommendations or advice given by Manager shall not be relied upon as legal advice.

16. Security Services. Manager acknowledges that a security service contract exists at the Project which services and contract have been approved by Owner and said contract shall remain in full force and effect and shall be paid for as a Project Expense. Manager's sole responsibility with respect to any security services shall be reasonable cooperation with the company providing such services and to use commercially reasonable efforts to enforce the terms of any separate security contract between Owner and the entity providing security services. Owner hereby agrees to indemnify, defend and hold Manager harmless with respect to any loss, claim, damages, cause of action or legal action (including reasonable attorneys' fees and court costs) asserted against Manager due to (i) the absence of security services; (ii) inadequate security services; (iii) safety issues of any kind related to the Project; (iv) the acts or omissions of any such security company; (v) the acts of third parties; or (vi) any claimed dangerous Project conditions and/or inadequacies in any security services provided.

17. Project Defects. Owner and Manager acknowledge and agree that all aspects of the Phase I and Phase II Scopes of Work regarding the demolition, rehabilitation and construction and improvements identified in the Third Amendment and Fourth Amendment of the Lease have been completed in their entirety by prior management. Notwithstanding anything to the contrary in the Agreement, Manager is not responsible for parts of the Project during its construction or

rehabilitation, and Manager's responsibility for a residential unit will not begin until Manager, Owner and Owner's contractor agree that such unit is complete (subject to minor punch list items) and ready for occupancy. In no event shall Manager be responsible for uncovering violations of building, zoning, subdivision, fire or other codes or other laws and regulations (including laws relating to accessibility) or for defects or other shortcomings in the Project or its construction. Manager hereby expressly disclaims any expertise with respect to compliance with construction, conditions constituting defects or conditions of the Project, accessibility laws, environmental and other similar laws and regulations which may govern the Project and the Project. Manager's responsibility as to such matters will be limited to advising Owner of problems that come to the attention of Manager and implementing, at Owner's cost, remedial steps directed by Owner on terms consistent with the Agreement.

18. Debts of Owner. In the performance of its duties as Manager, Manager shall act on behalf of Owner solely in Manager's capacity as Owner's manager. All debts and liabilities to third parties incurred by Manager pursuant to the Agreement, with the prior written approval of Owner, and in the course of its operation and management of the Project shall be the debts and liabilities of Owner only and shall be classified as a Project Expense, and Manager shall not be liable, in whole or in part for any such debts or liabilities. Owner agrees to defend, indemnify and hold Manager harmless of and from any such debts and liabilities. Manager shall have no responsibility to make payments with Manager's funds on any indebtedness incurred by Owner whether or not secured by the Project or any portion thereof.

19. Non-Discrimination. In the performance of its obligations under the Agreement, Manager will comply with the provisions of any federal, state or local laws prohibiting discrimination in housing. In its ownership of the Project, Owner will comply with the provisions of any federal, state or local laws prohibiting discrimination in housing.

20. Manager's Compensation. The Manager will be compensated for its services under the Lease by an initial lump sum payment due and payable as of the Effective Date in the amount of \$17,500, a monthly bookkeeping fee of \$7.50 per unit, whether or not occupied, a monthly management fee, calculated per unit, whether or not occupied, in the amount of \$78 (as may be increased from time to time), and other approved fees, as defined below (collectively, the "Management Fee").

The Management Fee is referred to collectively referred to herein as the "Total Compensation." The Total Compensation will be paid out of the Operating Account and treated as a Project expense. Recurring fees will be paid on the first day of each month following the month of service. The monthly fees due for any partial month, e.g., in the event of a termination, which is effective mid-month, shall be prorated on a thirty-day basis.

21. Term of Lease. The Lease, as assigned, shall continue as a month-to-month Lease. The Parties contemplate that management services shall be rendered for a term of at least two years, commencing, January 1, 2020 and ending December 31, 2021 unless sooner terminated as provided herein.

The Lease may be terminated by the mutual consent of the Parties at any time.

(a) The Lease may be terminated by either party, with or without cause, and without the consent of the other party, on thirty (30) days prior written notice.

(b) The Lease may be terminated by Owner for cause effective immediately upon delivery of notice of termination. Cause shall include, without limitation, material breach of the Agreement, gross negligence, intentional tort, theft/dishonesty, and/or voluntary or involuntary insolvency/bankruptcy.

(c) The Lease may be terminated by those who administer any applicable Program Requirements on such notice as may be specified in such Requirements.

(d) The Lease shall automatically terminate in the event of a sale of the Project, with a termination date effective as of close of escrow on such sale.

(e) Subject to the terms of the Agreement, the Lease shall automatically terminate upon execution of a management services agreement to replace the Lease. The Parties agree that new provisions may be agreed upon in connection therewith.

(f) In the event of a termination by the Owner, a termination fee in an amount equal to four (4) month's Total Compensation based on the average Total Compensation over the three (3) months preceding the month in which the anticipated Term is terminated (the "Termination Fee"). The Termination Fee shall be paid to Manager in addition to all other fees and amounts due to Manager pursuant to the Agreement, provided however, the Parties anticipate entering into a management services agreement to replace the Lease, and such Termination Fee will not apply upon execution of such management services agreement. The Parties agree that the Termination Fee is designed to reasonably compensate Manager for its costs incurred in taking on the management of the Project for a short term and for the Manager's investment in time, resources and employees in that endeavor, all of which costs would be extremely difficult, if not impossible, to specifically calculate with any degree of accuracy.

22. Miscellaneous.

(a) Attorneys' Fees. In the event an attorney is retained by Manager, or legal action or other proceedings are instituted to meet its obligations under the Agreement, assist Owner, enforce any of the provisions of the Agreement, or any party's rights hereunder, or otherwise relating to the subject matter of the Agreement, Manager shall be entitled to recoup and be reimbursed for such costs and in the event of a formal action, the prevailing party shall be entitled, whether or not such action is prosecuted to judgment or such other proceeding is prosecuted to an award or decision, to all costs and expenses of such litigation or other proceeding, including reasonable attorneys' fees, interest, costs of suit, costs of investigation, and costs, expenses and fees incurred in appellate proceedings, in enforcing any judgment, or in any action or participation in, or in connection with, any case or proceeding under the United States Bankruptcy Code or any successor statutes. "Prevailing Party" shall include, without limitation, a party who dismisses an action in exchange for payment of sums allegedly due, performance of covenants allegedly breached, or consideration or other performance substantially equal to the relief sought in the action. The provisions of this paragraph cover post judgment attorneys' fees and shall survive any judgment

and shall not be deemed merged into any judgment. The amount of attorney's fees and costs incurred shall not be used to calculate the prevailing party to litigation.

(b) Notices. Unless otherwise specifically provided herein, any notices, demands or communications of any kind required or desired to be given hereunder shall be in writing, and shall be deemed to have been duly given on the date of delivery if delivered personally; seventy-two (72) hours after mailing by first class, postage prepaid, registered or certified U.S. mail with return receipt requested; upon delivery or attempted delivery by a reputable overnight delivery service; if a facsimile number appears below or is subsequently provided in a manner that complies with the requirements of this paragraph, at the time of transmission by facsimile (provided the transmitting machine records and issues at the time of transmission and the sender retains a record of the transmittal and provided that a hard copy of the transmitted notice is mailed by regular mail, addressed as set forth in this paragraph, on the same day as the transmission by facsimile); and in each case addressed as follows, or at such other address as shall be designated from time to time by the written notice of either party delivered to the other in any manner set forth in this paragraph:

Owner:

Telephone: _____

Facsimile: _____

Manager:

Kalco Properties, Inc.

77 Mark Drive, Suite 20

San Rafael, CA 94903

Attn: Barry Levy

Telephone: (415) 472-0900

Facsimile: (415) 472-0111

(c) "Owner's Approval". All approvals, consents, and/or controls to be given or exercised by Owner under the Agreement shall be given or exercised on Owner's behalf by the Director of Project who has the authority to approve and enter into the Lease, and any amendments thereto, on behalf of the City without the approval of the City's Board of Supervisors or the Mayor pursuant to San Francisco Administrative Code section 23.31.

(d) Applicable Law. The Lease shall be governed by, construed and enforced in accordance with the laws of the State of California.

(e) 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 the Lease, as amended from time to time.

(f) Lease/Full Force and Effect. Except as expressly modified herein, the terms, covenants and conditions of the Lease shall remain unmodified and in full force and effect. The Lease including this Exhibit A, as currently amended, constitutes the entire agreement of the

parties concerning the subject matter hereof, and supersedes and conceals any and all previously negotiations, agreements or understandings, if any regarding the matters contained herein. City and Manager hereby ratify and confirm all of the provision of the Lease as amended by this Exhibit A.

(g) Entire Agreement. The Agreement and this Exhibit A constitute the entire agreement between the parties relating to the subject matter of the Agreement, and no agreement or understanding, whether oral or written, made prior to or contemporaneously with the Agreement or this Exhibit A shall have any force or effect. The Agreement and this Exhibit A may not be modified, except by an instrument in writing signed by both Parties.

(h) Governing Law. The Agreement shall be governed by California Law.

(i) Interpretation. Each party acknowledges that such party has been or has had the opportunity to be represented in the negotiation of the Agreement by counsel of such party's choosing; that such party and any counsel representing such party have reviewed the Agreement and participated in its drafting or have had the opportunity to do so; and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

(j) Waiver. No covenant, term or condition or the default thereof shall be deemed waived, except by written consent of Owner, and any such waiver shall not be deemed to be a waiver of any preceding or succeeding default of the same or any other covenant, term, or condition. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

(k) Assignment. The Agreement may not be assigned, except with the consent of the other party, which may be given or withheld in such party's sole discretion. Subject to the foregoing, the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

(l) LIMITATION OF DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, NEITHER OWNER NOR MANAGER SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE, INCLUDING LOST REVENUES AND PROFITS AND DAMAGES, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. IN NO EVENT SHALL MANAGER BE LIABLE FOR DAMAGES IN EXCESS OF THE TOTAL COMPENSATION PAID BY OWNER DURING THE 12 MONTH PERIOD PRIOR TO THE DATE SAID DAMAGES ARE INCURRED.

(m) Indemnity. Owner shall indemnify and hold harmless Manager, each person who holds a direct or indirect ownership interest in Manager, and the respective officers, directors, shareholders, managers, employees, parents, subsidiaries and affiliates of such party and such owners (collectively, "Manager Indemnitees"), and defend the Manager Indemnitees at Owner's sole expense, with counsel selected by Manager, against any and all liabilities, claims, causes of action, losses, demands, judgments, settlements and costs and expenses (including reasonable

attorneys' fees and court costs) ("Claims") arising out of or in connection with (a) the ownership, maintenance or operation of the Project, or the performance by Manager of its responsibilities under the Agreement or acting under the express or implied directions of Owner whether or not contrary to Manager's written recommendations to Owner, or Manager's status as the Project manager for the Project, (b) Owner's violation of any applicable federal, state or local law or regulation, and (c) any debts, liabilities or payments for which Manager is exculpated or expressly indemnified pursuant to the Agreement; except that this indemnity shall not apply if any such Claims resulted from the Manager's sole negligence, gross negligence or willful misconduct. Owner's agreements under this Section will survive any termination of the Agreement to the extent of any liability or obligation arising out of facts or circumstances occurring or existing prior to such termination. Owner's responsibility shall specifically extend to hazardous materials, toxic wastes and similar substances, as well as microorganisms and other substances that could pose a threat to human health, and to costs incurred in connection with any investigation of site conditions or remediation, removal or restoration work because of the presence of any of the same, except to the extent related to hazardous materials released into the environment by Project Employees.

(n) Reimbursement of Expenses. Owner shall be liable for the costs and expenses of maintaining and operating the Project, and except as otherwise specifically provided in the Agreement, Owner shall pay, or shall reimburse Manager for, all costs and expenses, including all attorneys' fees and costs, incurred by Manager in connection with the maintenance or operation of the Project or the performance by Manager of its duties under the Agreement. Reimbursement of extraordinary expenses shall be due and payable in full within twenty five (25) days of Manager's request for reimbursement. Purchases of, or contracts for, materials or services may be made in bulk by Manager in connection with its operation of apartment projects generally, and Owner agrees that the pro rata portion of the net costs of such materials or service used in connection with, or for the benefit of, the Project shall be allowed as a reimbursable cost hereunder. Owner shall not be obligated to reimburse Manager for expenses for office equipment or office supplies of Manager (unless incurred for the Project), for any overhead expenses of Manager incurred with respect to its general offices, for costs relating to accounting services performed hereunder, or for any salaries of off-site supervisory employees of Manager (other than extraordinary services requested by Owner). Manager shall not be obligated to make any advance to or for the account of Owner or to pay any sums except out of funds in the Operating Account, and Owner shall be liable for all expenses of maintaining and operating the Project to the extent that such expenses exceed receipts from the Project available in the Operating Account. Manager will be excused from the performance of its responsibilities and shall not be required to pay any such expenses under the Agreement to the extent that funds are not available in the Operating Account to pay related expenses (other than expenses for which Manager is not entitled to reimbursement under the terms of the Agreement) until such time as Owner funds/ reimburses Manager or the Operating Account upon the request of Manager. Owner's agreements under this Section will survive any termination of the Agreement to the extent of any such costs or expenses arose out of facts or circumstances occurring or existing prior to such termination.

OWNER:

SIGNATURE ON
NEXT PAGE

MANAGER:


Kalco Properties, Inc.


By: _____

By: _____

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: 
Andrico Penick
Its: Director of Property 12/31/19.

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