

## **About this Tool**

### **Description:**

This sample agreement is intended for use by a property owner to contract with a management company to operate a rent- and income-restricted rental housing property as an agent of the property owner.

### **How to Adapt this Document:**

It is recommended that a property owner and attorney carefully review any management agreement prior to engaging a property management company. The property management company selected will undoubtedly have a standard form of management agreement. It is advisable to compare it to other sample forms such as this one and use qualified legal counsel to select a form of agreement that meets the particular requirements of a specific rental housing property—including income and rent restrictions—and describes management policies that comply with applicable federal, state and local laws.

Within this sample documents are notes and instructions in brackets with italic type. These should be removed from the final form.

The document also includes a list of appendices which are specific to an individual project and therefore not provided—for example: tenant selection policies, an operating budget and insurance requirements.

This example represents the traditional “agency” form of agreement. A property owner may also wish to consider the “independent contractor” form of agreement, which (in some forms) may reduce the liability of the property owner for actions of the management company.

### **Source of Document:**

This document was adapted from documents provided by the Housing Development Corporation and the Community Development Law Center, both based in Portland, Oregon.

### **Disclaimer:**

This document is not an official HUD document and has not been reviewed by HUD counsel. It is provided for informational purposes only. Any binding agreement should be reviewed by attorneys for the parties to the agreement and must conform to state and local laws.



This resource is part of the NSP Toolkits. Additional toolkit resources may be found at [www.hud.gov/nspta](http://www.hud.gov/nspta)

U.S. Department of Housing and Urban Development  
Neighborhood Stabilization Program

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# PROPERTY MANAGEMENT AGREEMENT CONTRACT

Between

\_\_\_\_\_, Owner, and

\_\_\_\_\_ Management, Inc., Agent

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THIS PROPERTY MANAGEMENT AGREEMENT ("Agreement") is made effective as of \_\_\_\_\_ *[insert month/day/year]*, by and between \_\_\_\_\_ ("Owner"), and \_\_\_\_\_ Property Management Company ("Agent"). This Agreement pertains to certain real property located in \_\_\_\_\_ *[insert city & state]* at the various street addresses together with all improvements, appurtenances, and equipment located thereon. These addresses comprise the "Project" funded under the Neighborhood Stabilization Program (NSP). Owner desires to contract with Agent to provide full property management services for the Project. In consideration of the covenants and agreements below, the parties agree as follows:

## Article I. Definitions

The following definitions reflect the terms as used in this agreement:

- (a) "**Fiscal Year**" is the year ending \_\_\_\_\_.
- (b) "**Funders**" includes those entities providing financing for the Project, as set forth in the Project Requirements.

- (c) "**Gross Collections**" are all amounts actually collected by Agent, as rents or other payments, including any federal rental assistance, but excluding (i) income derived from interest or investments, (ii) discounts and dividends on insurance, and (iii) Tenant Deposits.
- (d) "**Lease**" is any rental agreement whereby Owner has agreed to let and Tenant has agreed to accept a Rental Unit in the Project identified in the Lease in accordance with the terms of the Lease. The form of Lease entered into by a Tenant must meet the requirements set forth in Section 4.3(d) and have attached thereto the form of lease rider described in Section 4.3(e).
- (e) "**Operating Account**" is an account in Agent's name on behalf of the Owner designated of record. The account name should identify the Project and be approved in writing by Owner, at such financial institution as Owner may specify from time to time in writing.
- (f) "**Project Requirements**" are the leasing and other requirements contained in any documents signed by Owner in connection with the acquisition, financing, and ownership of the Project (the "Requirements"), including the Project Documents. The financing documents include the following requirements which relate to tenant income and rent limits, insurance requirements, lease provisions, reporting and recordkeeping requirements, and grievance procedures:
- The Agent shall comply with all applicable HUD requirements of the Neighborhood Stabilization Program. *In the event of any conflict between the HUD requirements and either this Management Agreement, the Management Plan, or directives from Owner, the HUD requirements will prevail.*
- Per NSP directives for meeting the requirements of the 25% set aside, all units covered under this agreement will be subject to Low HOME unit rent calculations.
- (g) "**Rent**" is the monthly amount (excluding federal rental assistance payments) that a Tenant is obligated to pay Owner pursuant to the terms of a Lease.
- (h) "**Rental Unit**" is a dwelling unit in the Project rented and to be rented to residential Tenants.

- (i) **"Tenant"** is one or more persons occupying a Rental Unit pursuant to a Lease.
- (j) **"Tenant Deposit"** is any security deposit, cleaning deposit, prepaid rent deposit, or other sum advanced by a Tenant under terms that may require repayment by Owner or application against a future liability of such Tenant.

## **Article 2: Appointment and Acceptance**

The Owner appoints the Agent for the management of the property described more fully in Attachment A of this Agreement, and the Agent accepts the appointment, subject to the terms and conditions set forth in this Agreement.

## **Article 3: Term and Termination**

This Agreement shall be in force on an annual basis beginning on the \_\_\_ **day of \_\_\_\_\_, 201\_** with a term of three years. This Agreement shall continue thereafter until either the Owner or the Agent terminates it, effective the last day of any month, by written notice to the other party ninety (90) days prior to said date. Either party may, not earlier than 60 days or later than 30 days prior to any renewal date, provide written notice of any proposed amendments or modifications to the Agreement, and the parties agree to negotiate in good faith the terms of any such amendment. In the event the parties cannot mutually agree on acceptable terms, the Agreement shall terminate. In the event the parties fail to provide notice of any proposed amendments to this Agreement within the period specified before the renewal date, the then-existing terms of the Agreement shall remain in full force and effect for the next one-year renewal period unless the Agreement is otherwise terminated.

This Agreement shall also be subject to termination upon any of the conditions identified in Article 10.

## **Article 4: Services of Agent**

### **4.1 Agent represents:**

- a) that it is experienced in professional management of property of the character and nature similar to the Project
- b) that it is legally authorized to manage such property in the state of (\_\_\_\_\_),
- c) that it will manage the Project in accordance with the highest professional standards for such property.

- d) that it confer fully and regularly with the owner in the performance of its duties and to continue to remain informed regarding the property.

4.2 In **Attachment B**, Agent discloses to the Owner any and all identities of interest that exist or will exist between the Agent and the Owner, suppliers of material and/or services, or vendors in any combination of relationship.

4.3 As soon as practicable, but not later than final completion of the rehabilitation or construction of the Project or any phase thereof, Owner shall furnish Agent with a complete set of general plans and specifications for the Project and copies of all guaranties and warranties pertinent to construction and fixtures and equipment of the Project. Agent shall utilize this information along with inspections from appropriate staff to thoroughly familiarize itself with the character, construction, layout, and plans of the Project, including the electrical, heating, plumbing, and ventilating systems and all other mechanical equipment in the Project.

4.4 Agent shall offer for rent and shall rent the Rental Units in the Project in accordance with all Project Requirements, a rent schedule, including required deposit amounts and conditions, approved in writing by Owner, the Management Plan (**Exhibit C**) and the Leasing Guidelines (**Exhibit D**). Pursuant to its rental responsibilities, Agent shall:

- (a) Carry out marketing in accordance with the approved Resident Selection and Affirmative Marketing Plans.
- (b) Maintain a current list of acceptable prospective tenants and undertake all arrangements necessary and incidental to the acceptance of rental applications and the signing of Leases. Agent shall market the rental units in accordance with the Affirmative Fair Housing Marketing Plan, if any, and maintain records of the marketing activity for compliance review purposes. Agent shall exercise its best efforts (including, but not limited to, placement of advertising, interview of prospective Tenants, assistance and counseling in completion of rental applications and signing of Leases, processing of documents and credit and employment verifications, and explanation of the program and operations of Owner) to effect the leasing of rental units and the renewal of leases in accordance with the terms of each lease and the requirements of the NSP Program so that the Project is occupied as fully as possible.
- (b) Show rental units in the Project to all prospective tenants.

- (c) Take and process applications and application fees for rentals, including interviewing and screening prospective tenants to determine if they meet the Leasing Guidelines and Tenant Selection Criteria **(Exhibit E)**. Applicants shall be selected from the waiting list in chronological order. If an application is rejected, the applicant shall be advised in writing of the reason for rejection. If the rejection is based on information from a credit bureau, the source of the report must be revealed to the applicant pursuant to the Fair Credit Reporting Act. The rejected application, together with the written notice of the rejection and any other related correspondence, shall be kept on file for three years following the rejection.
- (d) Comply with the leasing and “Project Requirements” of the Neighborhood Stabilization Program (NSP). Agent shall lease rental units in the Project only to individuals or families who, at a minimum, qualify under the guidelines established by the Department of Housing and Urban Development (“HUD”) as *[insert income restrictions]*
- (e) Comply with the Leasing Guidelines **(Exhibit D)** and use a lease form that complies in all respects with State and local residential tenant/landlord laws, which lease shall be subject to the approval of Owner and shall be consistent with Project Requirements. Upon request, Agent shall submit to Owner a letter from an attorney authorized to practice law in the state of \_\_\_\_\_ *[insert State]*, stating that the attorney has reviewed the lease and finds that it complies in all respects with the Project Requirements and applicable federal and state laws.
- (f) Certify or re-certify Tenants as required by the Project Requirements, by obtaining tenant certifications and third party verification(s) of tenant income and assets.
- (g) Sign all leases in Agent's name, identified as agent for Owner, subject to prior written approval by Owner of any deviation from Owner's approved rent schedule, lease forms and Leasing Guidelines.
- (h) Collect, deposit, and disburse tenant deposits, if required, in accordance with the terms of each Lease and Section 8.2 hereof.

- (i) Prorate the first month's Rent collected from a Tenant should the Lease term commence on any other day than the first day of the month. If the Lease term occurs after the 25th day of the month, the prorated amount, plus the next month's rent, shall be collected on or before the first day of the Lease term.
- (j) Participate with the Tenant in the inspection of each rental unit identified in the Lease prior to move-in and upon move-out, and record in writing any damage to the Rental Unit at the time the Tenant moved in and any damage occurring during the Tenant's occupancy.

4.4 If any of the properties in the Project is a rehabilitation of a pre-1978 built building and contains rental units with one bedroom or more that are expected to be available to tenants other than the elderly or disabled, then the Agent must comply with 24 CFR Part 35, including providing each prospective Tenant a copy of the informational pamphlet entitled Lead-Based Paint: Protect Your Family and a copy of the Lead Hazard Evaluation report on the building prepared by the Owner's environmental consultant. The Agent agrees to indemnify and hold harmless the Owner for any damages and attorneys' fees incurred by the Owner or Agent for failure to properly implement this paragraph.

4.5 Agent shall collect, when due, all rents, charges and other amounts receivable on Owner's account in connection with the management and operation of the Project. Such receipts shall not be commingled with other funds and shall be deposited and held in the Operating Account in accordance with the provisions of Section 8.1.

4.6 Agent shall secure full compliance by each Tenant with the terms of such Tenant's lease and in a manner consistent with the Landlord-Tenant laws governing the Project. Voluntary compliance will be emphasized, and Agent shall counsel Tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by Agent, to the end that involuntary termination of tenancies may be avoided to the maximum extent consistent with sound management of the Project. Nevertheless, Agent may, and shall if requested by Owner, lawfully terminate any tenancy when, in Agent's judgment, sufficient cause for such termination occurs under the terms of Tenant's Lease, including, but not limited to, nonpayment of rent. For this purpose, Agent is authorized to consult with legal counsel to be designated by Owner and bring actions for eviction and execute notices to vacate and judicial pleadings incident to such actions; provided, however, that Agent shall keep Owner informed of such actions and shall follow such instructions as Owner may prescribe for the conduct of any such action. Reasonable attorney fees and other necessary

costs incurred in connection with such actions, as determined by Owner, shall be paid out of the Operating Account. Agent shall properly assess and collect from each Tenant or the Tenant Deposit the cost of repairing any damages to a Rental Unit arising during the Tenant's occupancy.

4.7 The Agent will ensure that the Project is maintained and repaired in accordance with the owner's specifications, Housing Quality Standards (HQS) and applicable state and local health and building codes. The Agent shall, at Owner's expense, maintain the Project in a decent, safe, and sanitary condition. The Agent will ensure that the site will be kept in a condition acceptable to the Owner, including but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary. The following provisions will apply:

- (a) Special attention shall be given to preventive maintenance.
- (b) Subject to Owner's prior written approval, Agent shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems, and for the performance of extraordinary repairs beyond the capability of regular maintenance personnel. Prior to commencement of any work Agent shall obtain appropriate written evidence of such contractor's liability and worker's compensation insurance.
- (c) Agent shall systematically and promptly receive and investigate all service requests from Tenants, take such action thereon as may be justified, and keep records of the same. Emergency requests shall be serviced on a 24-hour basis. Complaints of a serious nature shall be reported to Owner after investigation. At Owner's request, Owner shall receive all service requests and the reports of action thereon.
- (d) Agent shall take such action as may be necessary to comply with any and all orders and requirements of federal, state, county, and municipal authorities and of any board of fire underwriters, insurance companies, and other similar bodies pertaining to the Project.
- (e) Except as otherwise provided in this Section, Agent is authorized to purchase, at Owner's expense, all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project. Agent shall obtain bids for all contracts, materials, supplies, utilities, and services exceeding \$\_\_\_\_\_ [*insert amount*] for those items that can be obtained from more than one source. Agent shall secure and

credit to Owner all discounts, rebates, or commissions obtainable with respect to purchase, service contracts, and all other transactions on owner's behalf.

- (f) Notwithstanding the foregoing, the prior written approval of Owner will be required for any contract that exceeds one year in duration, or expenditure that exceeds \$ \_\_\_\_\_ *[insert amount]* in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Project, except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Project.
- (g) In the event of emergency repairs, Agent shall notify Owner promptly, and in no event later than 72 hours from the occurrence of the event.
- (h) If Agent uses its own employees to perform maintenance, the charge for such employees shall be the payroll salary identified in the budget or a billing rate of \$ \_\_\_\_\_ *[insert amount]* per hour, including all fringe benefits and payroll taxes.
- (i) Agent shall use its best efforts to re-rent vacant units within \_\_\_\_\_ *[insert number]* business days.

4.8 Agent shall make arrangements for water, electricity, gas, fuel, oil, sewage, and trash disposal, vermin extermination, decoration of common areas, laundry facilities, telephone services, and other necessary services in connection with the Project. Subject to Owner's prior written consent as required in Section 4.7, Agent shall make such contracts as may be necessary to secure such utilities and services.

Agent shall also include the collection of utility bills from tenants in lease provisions developed for the Project and use this information to track the efficiency of energy efficiency improvements implemented in the rehabilitation of the Project.

4.9 All personnel assigned to work on the Project shall be contracted service providers or employees of Agent, who are subject to the approval of Owner, and shall be paid by Agent out of operations as agreed to in the annual budget. Agent's Company Policy (**Exhibit F**) sets forth the duties of the Property Manager and the Property Manager's employees.

4.10 Disbursements from the Operating Account shall be made in accordance with the operating budget prepared pursuant to Section 4.11. In the event that the balance in the Operating Account is at any time

insufficient to pay disbursements due and payable under this Section 4.10, Agent shall promptly inform Owner of the fact and Owner may then remit to Agent sufficient funds to cover the deficiency. In no event shall Agent be required to use its own funds to pay such disbursements or be liable for any losses, costs, or damages arising out of Owner's failure to cover the deficiency.

#### 4.11 Operating Budget.

- (a) Agent shall prepare a recommended annual operating budget and projected rental rates for the Project for each Fiscal Year during the term of this Agreement. Agent shall submit the annual operating budget to Owner at least 90 days before the beginning of such Fiscal Year. The proposed budget shall be subject to approval by Owner. Owner shall inform Agent of any changes incorporated in the approved operating budget within 45 days after receipt from Agent.
- (b) The annual operating budget shall include a schedule of recommended rents to be charged for each Rental Unit, including recommended Rent increases with respect to Lease renewals and new Leases. The recommended rents shall be in compliance with the Project Requirements, including consideration of changes in median family income and utility allowances.
- (c) In preparing each proposed annual operating budget, Agent shall use its best efforts to take into account anticipated increases in real estate taxes, utility charges, and other operating costs. To the extent feasible, Agent shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation.
- (d) At the same time Agent prepares the Annual Operating Budget, Agent shall prepare for Owner's approval an assessment of the capital needs of the Project for the coming year and for the two years following the coming year.
- (e) Agent shall make no expenditures in excess of the amounts in the approved operating budget, for each line item of operation expense itemized, without the prior written approval of Owner, except as permitted pursuant to Section 4.7 for emergency repairs involving manifest

danger to persons or property, or required to avoid suspension of any necessary services to the Project.

- (f) Included in the Operating Budget, to be paid from the Project Budget, shall be an Asset Management Oversight Fee which Agent shall pay to \_\_\_\_\_ *[insert person or entity]* in accordance with Project Requirements.

#### 4.12 Escrow and Tax Payments; Property Tax Exemption.

- (a) If there is a mortgage loan on the Project, Agent shall make monthly escrow payments required under the mortgage loan for the purpose of funding insurance, tax, and such other reserve or escrow accounts from funds collected in accordance with Project Requirements. Agent shall promptly present tax bills and insurance premium notices to the escrow agent for payment and shall furnish Owner with evidence of timely payment of such taxes and insurance premiums, and of timely payment of mortgage and escrow payments.

If the Project does not have a mortgage loan, then Agent shall make monthly escrow payments into appropriate Project savings accounts and shall timely pay bills from these accounts.

- (b) As appropriate, Agent shall apply for such property tax exemption or special valuation as the Project qualifies for. At the time Agent applies for the exemption or special valuation, Agent shall forward to Owner a copy of the application. Upon receipt of the order granting such exemption or valuation, Agent shall forward to Owner a copy of such document. In the event the exemption or valuation is denied, Agent shall promptly notify Owner of such denial.

4.13 Agent shall acquire and keep in force at Owner's expense any and all licenses and permits required for the operation of the Project as rental housing.

4.14 Agent shall prepare all reports required by the Project Requirements. Upon Owner's request, Agent shall send all such reports to Owner for Owner's prior approval, which approval shall not be unreasonably withheld or delayed; provided, however, that Owner shall have two weeks to review such reports prior to submission to any Lender, if required.

Additionally, Agent shall have the following responsibilities with respect to records and reports:

- (a) Reports will be prepared, distributed and maintained in a manner satisfactory to Owner. Agent shall provide Owner with a copy of all such reports.
- (b) Agent shall establish and maintain a system of records, books, and accounts in a manner satisfactory to Owner, which is consistent with and for the durations mandated by the "Project Requirements". All records, books, and accounts shall be subject to examination at reasonable hours upon reasonable notice by any authorized representative of Owner.
- (c) On or before the 20<sup>th</sup> day of the month, Agent shall prepare and provide to Owner a monthly report in a form satisfactory to Owner, including at least the following:
  - (i) a statement of income and expenses for the preceding month and year-to-date, including a comparison with the approved budget for the same periods; the income portion of the statement shall include, a statement of gross potential rental income (i.e., rental income if the Project were at 100% occupancy for the month), vacancy loss, actual rental income collected and an itemized statement of other income received
  - (ii) an itemized list of all delinquent rents as of the 10th day of such month, as well as a report of action taken thereon by Agent; a rent roll/cash receipts form for the previous month, including the number of occupied and vacant units and the physical vacancy rate;
  - (iii) a summary of disbursements and adjusting journal entries for the previous month
  - (iv) a balance sheet for the preceding month, including accounts receivable and payable, and cash balances in bank accounts (including separate security account balance), and a report on aged receivables and action taken thereon by Agent
  - (v) upon request of Owner, all reports outlined in Section 4.15 of this document, and
  - (vi) a narrative addressing:

(A) any unusual actions taken or emergencies responded to, and any accidents, claims, and potential claims for the previous month, and any outstanding maintenance requests.

(B) the annualized expenses per unit per year and, if there is a Mortgage Loan on the Project, the Debt Coverage Ratio,

(C) turnovers during the month,

(D) an explanation for any expense items varying by more than \_\_\_%*[insert amount]* from budget;

(E) a statement of the number of leases expiring in the upcoming month and whether Tenant has given or been given notice to vacate or has been recertified for lease renewal; and

(F) any other information required by the Project Requirements.

(d) Agent shall prepare, sign, and file all forms, reports, and returns required by law in connection with Agent's employment of personnel, unemployment insurance, workers' compensation insurance, disability benefits, social security, and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.

(e) Unless otherwise agreed and delineated in Article 9, all bookkeeping, data processing services, report preparation and management overhead expenses shall be paid for by Agent, from the Management Fee.

(f) Agent shall promptly furnish such additional information (including monthly occupancy reports, Project's balance sheets, monthly budgeted and actual income and expense reports, and tenant eligibility reports) as may be requested from time to time by the Owner or the HUD with respect to the leasing, financial, physical, or operational condition of the Project.

(g) Agent shall establish Tenant files containing copies of Leases, certification forms, notices, and other documentation required by Owner as necessary to conform to the Project Requirements.

4.15 As additional support to the monthly financial statement required pursuant to Section 4.14(c) above, Agent shall provide, upon Owner's request and as an expense to the Project copies of the following:

- A. All bank statements, bank deposit slips, and bank reconciliations;
- B. Detailed cash receipts and disbursements records;
- C. Detailed trial balance;
- D. Paid invoices; and
- E. Tenant eligibility reports.

4.16 Agent shall encourage and assist Tenants of the Project to take ownership of their unit and to increase their ability and incentive to protect and maintain the Project and to contribute to its efficient management. The agent agrees to handle all tenant relationships in a manner that incorporates professional business standards with sensitivity to the social, physical, economic and emotional needs of the individuals that reside in the project.

For single family properties, the Agent will clearly delineate in the lease the roles and responsibilities of tenant in the ongoing maintenance of the property.

4.17 Agent shall be available for communications with Owner and shall keep Owner advised of items materially affecting the Project. Agent and Owner shall establish a planned schedule for communications. However, Agent also agrees to cause a representative of agent to attend meetings with owner at any times reasonable requested by owner.

4.18 The Agent will promote, cooperate with and support any and all resident assistant programs the Owner employs for the project.

#### 4.19 Management Plan.

(a) If not attached hereto, then within 30 days from the date of this Agreement, Agent shall provide Owner with a copy of the Management Plan for the Project. The Management Plan provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the Project. Owner shall review and approve the Management Plan within 45 days after Owner receives the Plan from Agent.

(b) The Agent shall conduct its management activities in accordance with the policies and procedures set forth in the Management Plan. In addition, the Agent will carry out the tasks and responsibilities set forth in paragraphs 4.1 through 4.17 of this agreement. The Management Plan will be reviewed annually at the time the annual budget is being created to assure owner's objectives for the Project are clear and being achieved.

(c) An identification of duties and supervisory relationship for Project site-assigned staff and Agent's office staff are described in the Management Plan as is the pro rata division of singularly incurred operating expense common to the Agent and Owner.

4.20 Agent shall perform such other acts and deed requested by Owner as are reasonable, necessary and proper in the discharge of Agent's duties under this Agreement.

## **ARTICLE 5: MANAGEMENT AUTHORITY**

5.1 Agent's authority is expressly limited to the provisions contained herein, as they may be amended in writing from time to time in accordance with the provisions of this Agreement. Owner expressly withholds from Agent any power or authority to make any structural change in the Project or to make any other major alterations or additions in or to the Project or fixtures or equipment therein, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers granted to Agent by the terms of this Agreement, without the prior written consent of Owner.

5.2 Agent shall have the right to engage independent contractors for performance of such of its duties hereunder as Agent deems necessary, but Agent shall have the responsibility for supervision of the performance of such duties. All contracts with independent contractors in excess of \$ \_\_\_\_\_ shall be subject to the prior written consent of Owner. Expenses associated with such delegation of Agent's duties shall be solely the responsibility of Agent and payable solely out of the management fee set forth in Article 9.

5.3 Agent shall comply fully with all federal, state, county, municipal and special district laws, ordinances, rules, regulations, and orders relative to the leasing, use, operation, repair, and maintenance of the Project. Agent shall promptly remedy any violation of any such law, ordinance, rule, or regulation which comes to its attention and shall notify Owner by the end of the next business day after Agent becomes aware of any violation for which Owner may be subject to penalty. Agent shall take no action so long as Owner is contesting or has affirmed its intention to contest any such order or requirement.

5.4 In the performance of its obligations under this agreement, the Agent will comply with the provisions of any Federal, State, or local Fair Housing law prohibiting discrimination in housing or employment on the grounds of race, color, religion, sex, familial status, National origin, or handicap, and other nondiscrimination laws such as Title VI of the Civil Rights Act of 1964 (Public law 88-352, 78 Stat. 341), Section 504 of the

Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and the Americans with Disabilities Act, as applicable.

5.5 Agent shall maintain as confidential any financial information obtained from or about Owner, even after termination of this Agreement.

## **Article 6: Insurance and Indemnification**

6.1 Except as expressly provided to the contrary herein, the obligations and duties of Agent under this Agreement shall be performed as agent of Owner, but Agent shall be personally liable for its breaches of this Agreement and for damages and costs (including reasonable attorney fees) resulting from Agent's negligence or misconduct.

### 6.2 Insurance.

(a) Agent shall obtain and keep in force such forms and amount of insurance as required by the Project Requirements, with insurance companies satisfactory to Owner. Such insurance shall include but is not limited to, fidelity insurance, workers compensation insurance, insurance against physical damage (e.g., fire and extended coverage endorsement, boiler and machinery, etc.) and against liability for loss (including loss of income due to business interruption), damage, or injury to property or persons which might arise out of the occupancy, management, operation or maintenance of any part of the Project. Agent shall provide a copy of such insurance policies to Owner and, to the extent required by the Project Requirements, to others. The Project's Insurance Requirements are attached as **Exhibit H**.

(b) Agent shall be named as an additional insured while acting as agent for Owner in all liability insurance maintained with respect to the Project. Funders as required by the Project Requirements shall also be named as additional insured.

(c) Agent shall investigate and promptly furnish to Owner full written reports of all accidents, claims, and potential claims for damages relating to the Project, and shall cooperate fully with Owner's insurers, regardless of whether the insurance was arranged by Agent or others.

(d) Agent shall furnish whatever readily available information is requested by Owner for the purpose of obtaining insurance

coverage, and shall aid and cooperate in every reasonable way with respect to such insurance and any loss.

(e) Agent shall require that all subcontractors working on the Project maintain, at the subcontractor's expense, workers' compensation insurance, in such amounts as may be required by law from time to time. Agent shall be notified promptly in the event Owner waives any of the requirements in this Section 6.5.

### 6.3 Indemnification

(a) To the extent permitted by law, Agent agrees to defend, indemnify and save harmless Owner and its partners from and against all claims, investigations, and suits with respect to (i) any alleged or actual violation of state or federal labor, discrimination or other laws pertaining to agent's employees, it being expressly agreed and understood that as between Owner and Agent, all persons employed in connection with the Project are employees of Agent, not Owner; or (ii) Agent's breach of this Agreement or its negligence or misconduct.

(b) To the extent permitted by law, Owner agrees to defend, indemnify, and save harmless Agent from and against all claims, investigations and suits in connection with the Project, provided that such claims, investigations and suits are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, and such claims and suits arise, or are alleged to arise, in whole or in part out of any negligent act or omission of Owner, its officers, employees, or agents. Owner agrees to include Agent as an additional insured in Owner's public liability policy with respect to the Project, but only while Agent is acting as real estate manager for Owner under this Agreement. Owner shall provide Agent with a certificate of insurance evidencing such liability insurance and providing not less than ten days' notice to Agent prior to cancellation.

(c) The indemnity obligations contained in this Agreement shall survive the termination of this Agreement.

## **Article 7: Owner's Right to Audit**

7.1 Owner reserves the right to conduct or to appoint others to conduct examinations, at Owner's expense, without notification, of the books and records maintained for Owner by Agent and to perform any and all additional audit tests relating to Agent's activities hereunder.

7.2 Should Owner's employees or appointees discover either weaknesses in internal control or errors in record keeping, Agent shall correct such discrepancies either upon discovery or within a reasonable period of time. Agent shall inform Owner in writing of the action taken to correct such audit discrepancies.

## **Article 8: Remittance of Funds**

8.1 Agent shall deposit immediately upon receipt all Rents, Gross Rents, Gross Collections and other funds collected from the operation of the Project, including any and all advance funds, in a bank account approved by Owner. Such account shall be in the name of the Agent for the benefit of Owner and designated of record as "'PROJECT NAME'." or "Client's Trust Account."

8.2 Agent shall deposit immediately upon receipt all Tenant Deposits in a separate bank account approved by Owner. Such account shall be in the name of the Agent for the benefit of Owner and designated of record as "'PROJECT NAME' Tenant Deposit Account." The amount of each Tenant Deposit shall be held by Agent in an account, separate from all other accounts and funds. Interest on Tenant Deposits shall be paid according to State law and Agent shall maintain detailed records of all Tenant Deposits and such records shall be open for inspection by Owner's employees or appointees.

8.3 Any disbursements made by Agent pursuant to this Agreement shall be made out of the Operating Account, except as otherwise designated as expenses of the Agent. Owner agrees to make necessary operating funds available to Agent. Agent shall not be obligated to make any advance to the Operating Account or to pay any amount except out of funds in the Operating Account, nor shall Agent be obligated to incur any extraordinary liability or obligation unless Owner shall furnish Agent with the necessary funds for the discharge thereof. If Agent shall voluntarily advance any amount of its own funds on behalf of Owner for the payment of any obligation or necessary expense connected with the maintenance or operation of the Project or otherwise, Owner shall reimburse Agent therefor within a reasonable time after demand.

8.4 Notwithstanding any of the foregoing provisions or any similar provisions that follow, the prior written approval of the Owner will be required for any expenditure which exceeds \$\_\_\_\_\_ *[insert amount]* in any one instance for litigation involving the project, or labor, materials, or otherwise in connection with the maintenance and repair of the Project (including withdrawals from the replacement reserve to fund maintenance

and repair of the Project). This limitation is not applicable for recurring expenses within the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the project. In the latter event, the Agent will inform the Owner of the facts as promptly as possible.

8.5 Agent will secure and credit to Owner all discounts, rebates and commissions obtainable with respect to purchases, services, contracts and all other transactions on Owner's behalf.

## **Article 9: Agent Compensation**

The annual compensation which the Agent shall be entitled to receive for management services performed under this Agreement shall be a fee in the amount equivalent to \_\_%*[insert amount]* **of effective gross income.** The Owner will pay management fees, including the data processing and accounting fees, to the Agent monthly, not later than the fifteenth (15) day of each month, unless otherwise agreed by the parties.

## **Article 10: Termination**

10.1 This Agreement shall be terminated automatically and immediately upon destruction, condemnation, sale, exchange, or other disposition (excluding any mortgage or refinancing) of the Project by Owner.

10.2 Since HUD is a funder of this project, HUD may terminate this Agreement (a) for failure to comply with the provisions of the Management Certification or for other good cause, 30 days after HUD has mailed the owner and agent a written notice of its desire to terminate the agreement, or (b) in the event of a default under the mortgage, note, regulatory agreement or subsidy contract, immediately upon HUD's issuance of a notice of termination to the owner and agent. If HUD terminates the agreement the owner will promptly make arrangements for providing management satisfactory to HUD.

10.3 This Agreement will terminate by mutual written consent of Agent and Owner

10.4 This Agreement shall terminate upon the occurrence of any of the following circumstances, which shall be considered a default:

- (a) The filing of a voluntary petition of bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by either Owner or Agent;

- (b) The consent to an involuntary petition in bankruptcy or the failure by either Owner or Agent to vacate within 90 days from the date of entry of any order approving an involuntary petition;
- (c) The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either Owner or Agent a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment, or decree shall continue unstayed and in effect for a period of 120 consecutive days; or
- (d) The failure of Agent to perform, keep, or fulfill any of its duties or to comply with the covenants, undertakings, obligations, or conditions set forth in this Agreement, and the continuance of any such default for a period of 30 days after written notice of such failure (except in the event of Agent's misconduct, in which case no notice shall be required).
- (e) The failure of Owner to make available sufficient funds to maintain the Project in compliance with applicable state and local laws, and such failure to provide funding continues for a period of 30 days after Agent provides Owner with written notice of the need for such funds.

Upon any such event of default, the non-defaulting party may, without prejudice to any other recourse at law that it may have, give to the defaulting party notice terminating this.

10.5 Within five days after the termination of this Agreement, Agent shall close all accounts and pay the balances or assign all certificates of deposit regarding the Project to owner. Within ten days after the termination of this Agreement, Agent shall deliver to Owner all plans and surveys of the Project in its possession and all books and records, keys, reports, files, Leases, contracts, and all other written material and property concerning the Project. Within 30 days after the termination of this Agreement, Agent shall submit to Owner all reports required under Section 4.14 hereof to the date of such termination, and Agent and Owner shall account to each other with respect to all matters outstanding as of the date of termination. Upon Owner's request, Agent shall assign to Owner all contracts requested by Owner concerning the Project, to the extent permitted by such contracts, and

shall cooperate (at no expense to Agent) with Owner in connection with the transition to a new manager.

10.6 Upon termination of this Agreement for any reason, Agent shall deliver to Owner immediately upon termination (or upon Agent's subsequent receipt or acquisition) the following with respect to the Project:

- (a) Any Tenant Deposits or other monies belonging to Owner held by Agent on Owner's behalf; and
- (b) All records, contracts, Leases, receipts for deposits, unpaid bills, and other papers or documents relating to the Project.

## **Article 11: Cooperation**

If any claims, demands, suits, or other legal proceedings that arise out of any of the matters relating to this Agreement be made or instituted by any person against either Owner or Agent, Owner or Agent shall give to each other all pertinent information and reasonable assistance in the defense or other disposition thereof, at its sole expense.

## **ARTICLE 12: CONSENT**

Whenever in this Agreement the consent or approval of Agent or Owner is required, such consent or approval shall not be unreasonably withheld or delayed. Such consent shall be in writing and shall be duly executed by an authorized officer or agent for the party granting such consent or approval; provided, however, notwithstanding anything in this Agreement to the contrary, if such consent or approval would be required for Agent to comply with the Requirements, Agent shall not be responsible for a failure to comply with the Requirements as a result of Owner's refusal or unreasonable delay to so consent or approve.

## **ARTICLE 13: NOTICES**

All notices, demands, consents, and reports provided for in this Agreement shall be given in writing and shall be deemed received by the addressee on the third day after mailing if mailed by United States certified or registered mail, postage prepaid, or on the day delivered if personally delivered at the following addresses:

If to Owner: \_\_\_\_\_  
c/o \_\_\_\_\_  
[Street address]  
[City, state, zip]  
Attn: \_\_\_\_\_

If to Agent: M. \_\_\_\_\_  
\_\_\_\_\_ Management Inc.  
[Street address]  
[City, state, zip]

These addresses may be changed by giving written notice of such change to the other party.

## **ARTICLE 14: MISCELLANEOUS**

14.1 *Special Power of Attorney.* Owner authorizes Agent as attorney-in-fact for Owner to enter into and execute Leases and rental agreements with respect to the Project on forms approved by Owner, to collect rents and other funds due Owner in Agent's name on Owner's behalf, and to establish and make deposits into and withdrawals from the Tenant Deposit Account and the Operating Account in accordance with the terms of this Agreement.

14.2 *Entire Agreement.* This Agreement constitutes the entire Agreement between Agent and Owner, and no amendment, alteration, modification, or addition to this Agreement shall be valid or enforceable unless expressed in writing and signed by the parties hereto and unless such amendment, alteration, modification, or addition has been consented to in writing by the HUD.

14.3 *Waiver.* The waiver of any of the terms and conditions of this Agreement on any occasion or occasions shall not be deemed as waiver of such terms and conditions on any future occasion.

14.4 *Illegality.* If any provision of this Agreement shall prove to be illegal, invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.

14.5 *Relationship.* Nothing contained in this Agreement shall be construed to create a relationship of employer and employee between Owner and Agent, it being the intent of the parties hereto that the relationship created hereby is that of an independent contractor. Nothing contained herein shall be deemed to constitute the Owner and Agent relationship as a partnership or joint venture.

14.6 *Governing Law.* This Agreement shall be governed by and interpreted in accordance with the laws of the state of \_\_\_\_\_ [insert State].

14.7 *Enforceability.* The invalidity of any clause, part, or provision of this Agreement shall not affect the validity of the remaining portions thereof. Owner's remedies under this Agreement are cumulative, and the exercise of one remedy shall not be deemed an election of remedies nor foreclose the exercise of Owner's other remedies. No waiver by Owner of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. Owner or Agent may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violations of this Agreement, or for such other relief as may be appropriate, since the injury arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain. However, for damages claims, the parties agree they will first seek voluntary mediation in the case of any dispute, claim, counter-claim, defense, controversy (collectively, "Disputes") between the parties concerning this agreement. The party initiating mediation shall choose a neutral mediator and propose times and dates for mediation. If the second party objects to the choice of mediator, a second mediator will be chosen. The mediation shall be conducted under the then existing rules of American Arbitration Association. The mediation shall take place in \_\_\_\_\_ *[insert City]*, \_\_\_\_\_ *[insert State]* and mediator fees shall be shared equally between the parties. The resolution of the disputes shall be memorialized in writing. If mediation is unsuccessful, the disputes may be raised in any court with jurisdiction over this matter.

14.8 *Attorney Fees.* If any judicial remedy is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and other expenses, at trial and on appeal.

14.9 *Successors and Assigns.* This Agreement shall inure to the benefit of and constitute a binding obligation upon Owner and Agent and their respective successors and assigns; provided, however, that Agent shall not assign this Agreement or any of its duties hereunder, without the prior written consent of Owner. In the event Owner's current Managing General Partner or any successor Managing General Partner of Owner is removed, any successor Managing General Partner selected shall have authority to act hereunder on behalf of Owner.

14.10 *Exhibits.* All Exhibits are incorporated by reference into this Agreement.

14.11 *No Third-Party Beneficiaries.* Nothing in this Agreement is intended to benefit any person or entity other than Owner, Agent or HUD, and this Agreement shall not be construed to provide any other persons or entities with any rights or remedies against the parties. No one other than

Owner, Agent or HUD shall be entitled to rely on the implementation or enforcement of any term of this Agreement.

**AGENT**

**OWNER**

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

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

(Signature)

(Signature)

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBITS (To be attached)**

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- A. Property Description
  - B. Identity of Interest
  - C. Management Plan
  - D. Leasing Guidelines
  - E. Tenant Selection
  - F. Management Company Policies and Procedures
  - G. Operating Budget
  - H. Insurance Guidelines
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