



**AGREEMENT**

**FOR**

**PROPERTY MANAGEMENT SERVICES**

**for**

[ \_\_\_\_\_ ]

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**AGREEMENT FOR PROPERTY MANAGEMENT SERVICES**

***[Name of Property]***

**THIS AGREEMENT FOR PROPERTY MANAGEMENT SERVICES** (this "**Agreement**"), effective as of \_\_\_\_\_ (the "**Effective Date**"), is made by and between \_\_\_\_\_ ("**Owner**") c/o Housing Opportunities Commission of Montgomery County, 10400 Detrick Avenue, Kensington, Maryland 20895, and \_\_\_\_\_ ("**Manager**"), qualified to do business in the State of Maryland, with its principal business address at \_\_\_\_\_.

**WHEREAS**, Owner desires to contract with Manager to provide certain services for the property it owns commonly known as \_\_\_\_\_ and more particularly described on **Exhibit A**, attached hereto (the "**Property**"), and Manager is willing to provide such services on the terms and conditions and for the consideration stated herein; and

**WHEREAS**, Manager has expertise and experience in the marketing, management, and operation of facilities similar to the Property, including familiarity with mixed income properties containing market rate units, affordable housing programs, the Montgomery County Department of Housing and Community Affairs Housing Initiative Fund program for affordable housing and HOME Compliance, Project Based Section 8, the Housing Choice Voucher Program, and the Federal Low-Income Housing Tax Credit Program, and has personnel fully trained and experienced to duly and timely perform the responsibilities and obligations hereunder.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and promises stated herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree as follows:

## ARTICLE I

### **Appointment of Property Manager and Term**

- 1.1 **Appointment of Property Manager.** Owner hereby appoints Manager as “Property Manager” for the Property, and Manager hereby accepts said appointment, subject to the terms and conditions of this Agreement.
- 1.2 **No Partnerships.** Nothing in this Agreement shall be construed as creating a partnership, joint venture, or employment arrangement by and between Owner and Manager. The parties hereunder are acting as separate and independent contractors.
- 1.3 **Independent Contractor Status.** The parties to this Agreement agree that Manager has no status under this Agreement other than as independent contractor to Owner. Employees or agents of Manager are not by this Agreement or any actions of Owner or Manager hereunder made employees or agents of Owner, and are not entitled to the benefits provided by Owner to its employees, including, but not limited to, group insurance, leave and pension plan.
- 1.4 **Term.** This Agreement shall expire, unless sooner terminated pursuant to Article X, at the conclusion of two (2) years following the Effective Date. Owner, in its sole discretion, shall have two (2) renewal options (“**Renewal Options**”) that shall be exercised by Owner by providing Manager written notice of such renewal and renewal documents stating the new term of the Agreement. Each Renewal Option is for one-year, or any portion thereof.
- a. When determining whether to exercise its Renewal Options, Owner shall evaluate Manager’s performance in executing its duties described in this Agreement, including, but not limited to, the following: (1) the accuracy of reports required to be provided under this Agreement; (2) the results of customer surveys; (3) Manager’s timeliness in meeting deadlines (e.g., report submission, budget submission, etc.); (4) Manager’s timeliness in addressing work orders and turning units; (5) variances in the budget for revenue and expenses; (6) Manager’s capital and

long-term planning for the overall health of the Property; (7) Manager's consistent maintenance of the Property (i.e., ongoing maintenance that avoids large spikes in capital expenditures in preparation for planned inspections, such as REAC inspections); and (8) adherence to all regulatory and compliance requirements applicable to the Property.

## ARTICLE II

### Definitions

2.1 The following terms shall have the following meanings when used in this Agreement:

- a. "**Approved Budget**" shall mean the Property's approved budget as set forth in Article IV.
- b. "**Construction Management Fee**" shall mean the fee due to Manager as specified in Section 8.2 herein for the management of major capital projects or complete unit renovation.
- c. "**County**" shall mean Montgomery County, Maryland.
- d. "**Fiscal Year**" means July 1<sup>st</sup> through June 30<sup>th</sup> unless another twelve (12) month period is established by Owner.
- e. "**HOC**" shall mean Housing Opportunities Commission of Montgomery County.
- f. "**HUD**" shall mean the United States Department of Housing and Urban Development.
- g. "**Management Fee**" shall mean the fee provided for in Article VIII hereof.
- h. "**Managing Revenues**" shall mean the collected Revenues of the Property, less any quarters' allowance, interest income, transfers between funds for items reimbursed by Owner or the County for expenses incurred by the Property, insurance reimbursement funds, with the exception of rent loss, ratio utility billing system or any other utility reimbursement, and the cost of providing ancillary services.
- i. "**Management Services**" shall mean the operational, marketing, managerial, financial, personnel administration, and other services described in this Agreement.

- j. **"Mortgage"** shall mean any mortgage, deed of trust, regulatory agreement, or other instrument securing the interest of a Mortgagee in the Property.
- k. **"Mortgagee"** shall mean any public or private lending institution, agency, or other entity which has lent money to Owner and holds a mortgage secured against all or part of the Property.
- l. **"Operating Account"** shall mean an account established in Owner's name in a depository designated by Owner, which account shall be segregated from all other accounts maintained by Manager with signature authority for Owner and Manager.
- m. **"Property Expense"** shall mean an expense directly related to the operating costs and staffing of the Property, which expenses and payment of expenses shall be paid directly by Manager from the income of the Property.
- n. **"Replacement Reserve Account"** shall mean the fund established by Owner to which deposits shall be made from time to time as identified in the Approved Budget and from which payments, approved in advance by Owner, will be made for capital improvements or major repairs to the Property.
- o. **"Revenues"** shall mean all monies received by Manager from residents. It shall also include: subsidy, rental interruption insurance proceeds actually received, and all applicable miscellaneous income, such as that from vending machines, but shall specifically exclude:
  - i. Fees collected by Manager, which were earned by retained consultants to the Property.
  - ii. Interest earned on any bank account into which is deposited any income or escrow payments derived from the ownership or operation of the Property; and interest earned in the management of surplus cash generated by the Property.
  - iii. Insurance reimbursement funds, with the exception of rental interruption insurance proceeds actually received.



- iv. Rental License Fee or any other expense reimbursed from Owner.
- p. “State” shall mean the State of Maryland.
- q. “Subsidy” means a grant-in-aid or other financial assistance to the Property or to Owner or Manager for the benefit of the Property, or to a resident of the Property, provided by the United States, the State, the County, or any agency or instrumentality of any of them.

### ARTICLE III

#### Scope of Services

- 3.1 **Best Efforts.** Manager shall consistently devote its best efforts to manage, operate, secure, and maintain the Property. Manager shall perform the duties described in this Agreement in a timely manner, in good faith, and with due diligence.
- 3.2 **Management Plan.** On or before the Effective Date, Manager shall submit a detailed “Management Plan” to be implemented at the Property that addresses/includes the following:
  - a. A Staffing Plan, which is substantially the same as the Staffing Plan Manager provided in its response to the Request for Proposal (“RFP”) for the Property, that includes:
    - i. a list of the positions that will be staffed to the Property (including, but not limited to, the senior property manager, assistant property manager, and leasing consultant) and the type of work or service to be provided by each position;
    - ii. the proposed staff member(s) to be assigned to each position and, if not intended to be a permanent position, the estimated duration of the assignment;
    - iii. whether staff filling each position will be solely assigned to the Property or will be responsible for more than one property;
    - iv. full-time staffing ratio per resident for leasing and maintenance staff (must be calculated on a property and regional-portfolio basis);

- v. a narrative explaining how Manager's employee retention plan will be utilized at the Property to prevent excessive turnover; and
- vi. a narrative of the Manager's approach to staffing the Property and staff responsiveness to customers and HOC/Owner.
  - i. Manager will periodically be required to provide HOC with evidence of compliance with the Staffing Plan.
- b. staff supervision and senior staff involvement;
- c. regular, preventative, and emergency maintenance staffing, supervision, and procedures;
- d. unit turnaround timelines and procedures;
- e. contracting for services;
- f. capital needs assessments and reserve for replacement analyses as of the Effective Date and every three (3) years thereafter;
- g. monitoring of utilities;
- h. compliance with loan and program regulatory requirements, including certifications and re-certifications of residents' income eligibility under affordable housing programs (e.g., LIHTC, PBV, and PBRA, as applicable);
- i. accounting and rent collection procedures;
- j. customer service;
- k. documentation of any scheduled re-certifications;
- l. a communication plan that outlines how Manager will timely communicate with residents and Owner;
- m. a plan for responding to crises and major events at the Property;
- n. a technology plan that addresses how Manager will utilize Owner's required management and accounting software;

- o. a detailed description of Manager’s process and procedure to ensure that all reports and data submitted to Owner are accurate and timely;
- p. utilization of a third-party customer service survey company to conduct annual surveys with questions and criteria approved by HOC (complete annual survey results must be made available to Owner);
- q. a customer satisfaction plan that addresses how Manager will respond to resident complaints and maintain/improve the Property’s customer service rating;
- r. compliance responsibilities;
- s. fair housing responsibilities;
- t. tenant organizations; and
- u. resident services.

The Management Plan shall also include the Maintenance Plan (described in Section 3.3) and the Marketing and Media Plan (described in Section 3.4).

3.3 **Maintenance Plan.** As part of the Management Plan, Manager shall submit a detailed “**Maintenance Plan**” to be implemented at the Property that includes the below and which shall be updated and resubmitted annually:

- a. A work-order policy that conforms to HOC’s work order protocol that includes how to categorize work orders based on priority and the average timeframe for work order completion by priority.
- b. The level of automation for logging and tracking work orders.
- c. Managing and maintaining a maintenance supply inventory control system, including the level of automating for monitoring maintenance supplies.
- d. A policy for handling emergency maintenance and after-hours maintenance requests.
- e. A procedure for preparing and obtaining technical specifications.

- f. The Subcontracting Plan, which is the same Subcontracting Plan Manager provided in its response to the RFP for the Property, that includes the following information for each subcontractor to be used:
  - i. name and address;
  - ii. the type of work or service to be provided;
  - iii. the percentage of total work to be completed by each subcontractor;
  - iv. the estimated value or amount to be paid for such work; and
  - v. Minority/Female/Disabled designation (if applicable), including the name of the certifying agency, the certificate number, and proof of certification (e.g., a certification letter or copy of the certificate from the certifying agency).
    - i. Manager will periodically be required to provide HOC with evidence of compliance with the Subcontracting Plan.
- g. The activities to be performed by subcontractors and Manager's subcontracting procedures, including a list of vendors or subcontractors commonly used by Manager, and Manager's plan of inspection of subcontractor's performance.
- h. Trash collection, extermination, maintenance, and cleaning of hallways, common areas, site offices, and grounds.
- i. Parking garage/lot and sidewalk care, and snow and ice removal (including response time for snow/ice removal).
- j. Making major repairs (including plumbing, electrical, HVAC, carpentry, painting, and building repairs).
- k. Schedule of preventative and seasonal maintenance procedures for individual units, common areas, offices, parking areas, and the grounds.

- I. Procedures for unit preparation and vacancy turnaround, including average number of days to fill vacant units.

### 3.4 Marketing Services.

- a. As part of the Management Plan, Manager shall design and implement a “**Marketing and Media Plan**” using media and materials approved by Owner. Such plan will be consistent with the Property’s unique structure as a mixed income property with market rate units, an overall affordable property, or a market property, and shall take into account the following considerations: the size and location of the Property; the market classification, surrounding market, and surrounding submarkets; the nearest competitors with applicable market comparisons and rent concessions; the amenities and attributes of the Property; the deficiencies of the Property and how to correct them; advertising and collateral materials; signage; and tenant retention initiatives.
  - a. In the event the Property is in a lease-up phase, the Marketing and Media Plan shall include Manager’s “**Pre-Leasing Plan**,” which shall include Manager’s strategy to lease-up the property through stabilization (taking into account any financing-related deadlines (e.g., LIHTC delivery schedules)) and overall lease-up schedule.
- b. The Marketing and Media Plan must include a property-specific Tenant Selection Plan (“**TSP**”) that shall serve as the primary governing document for tenant eligibility, selection, and ongoing property governance. The TSP will include a description of Manager’s fair housing obligations, termination procedures, and grievance process for the Property. Manager shall enforce, monitor, and update existing TSPs as needed to ensure the TSP remains relevant to the Property. All TSPs are subject to HOC’s approval.
- c. The Marketing and Media Plan must also include a property-specific Affirmative Fair Housing Marketing Plan (“**AFHMP**”). The AFHMP is a HUD obligation and is completed using Form

HUD-935.2A. The purpose of the AFHMP is to help applicants for housing receive equal housing opportunities regardless of their race, color, national origin, religion, gender, familial status, or disability. The AFHMP will assist in effectively marketing the availability of housing opportunities to individuals of both minority and non-minority groups that are least likely to apply for occupancy at the Property. Manager shall update the AFHMP at least once every five (5) years. All AFHMPs are subject to HOC approval.

- d. Manager shall conduct an ongoing evaluation of the effectiveness of the Marketing and Media Plan and, with the prior approval of Owner, make changes in the plan as needed. Manager agrees to secure the approval of Owner before incurring any extraordinary advertising obligations or expenses that are not provided for in the Approved Budget.

### 3.5 **Personnel Administration.**

- a. Manager shall select, employ, train, supervise, evaluate the performance, and discharge such manager(s), assistant manager(s), employees, agents, clerks, maintenance workers or others who will work on-site and customarily be employed by Manager in the management of the Property. Manager shall formulate, implement, modify, and administer wage scales; rates of compensation; bonuses; benefits and wage increases in conformity with the Approved Budget; staffing schedules; job descriptions; personnel policies and procedures; disburse wages and salaries; maintain all payroll records, related tax records and personnel records; and prepare tax reports. No bonuses, rewards, or premiums shall be paid to employees who work on-site unless provided for in the Approved Budget and approved in writing by Owner. No credit or allowance shall be given to employees of Manager who reside on-site unless provided for in the Approved Budget or approved in writing by Owner. Manager shall use reasonable care in the selection of such employees, including without limitation, a criminal record check and other adequate background checks of each potential new hire. Manager is

required to comply with the terms and requirements of HOC's Contractor/Sub-Contractor Background Screening Requirements, attached hereto as **Exhibit D**. Manager's employees who handle or are responsible for Owner's monies shall be covered by Manager's fidelity bond or crime insurance. All personnel shall be the employees of Manager. At no time shall Owner employ or be deemed to employ any personnel for the management of the Property.

- b. Owner reserves the right to accept or reject, for any reason whatsoever, in its sole discretion, and without specifying the reason for the request, Manager's selection for the regional property manager and resident/community manager of the Property. Furthermore, Manager shall remove any regional property manager and/or resident/community manager assigned to the Property in a reasonable time frame after receiving notification thereof from Owner. Manager will maintain a policy of providing for managerial staff to remain employed at the Property, barring unsatisfactory performance or unusual circumstances, for the Term of this Agreement. The goal of Owner is to have Manager maintain a stable management presence at the Property.
- c. Compensation for the services of the regional property manager shall be at the expense of Manager. Compensation for the resident/community manager shall be considered a Property Expense.
- d. In the event Owner determines there has been excessive turnover of Manager's employees at the Property, Owner may require costs associated with Manager's employee onboarding, training, and/or temporary employee costs to be at the expense of Manager.

### 3.6 **Resident Services**.

- a. Manager shall select residents and/or tenants and negotiate new leases and renewals thereof in accordance with income and occupancy standards and the provisions of applicable affordable housing programs, including the requirements of Sections 42 and 142 of the

Internal Revenue Code of 1986, as amended, the Housing Choice Voucher Program. All leases and amendments or revisions thereto shall comply fully with the requirements of State, County, and local laws and ordinances and the requirements of any Mortgagee, and shall be submitted to Owner for its approval in advance of first use. In the event HOC provides Manager with an HOC "Model Lease," and/or any HOC addenda (including any financing related addendums), Manager will be required to use such documents. Manager shall take no action which would cause the termination or discontinuance of any Subsidy for which the Property or any occupant thereof was theretofore qualified without the consent of Owner.

- b. Manager shall serve vacate notices as necessary upon residents and/or tenants and prosecute in a lawful and non-actionable manner in Owner's name and at Owner's expense legal actions to evict residents and recover delinquent rents and other charges. For those purposes, Manager shall employ a reputable attorney licensed to practice law in the State of Maryland, and, immediately upon receipt thereof, deliver to Owner copies of all notices and pleadings served upon or by Manager in litigation stemming from the operation and occupancy of the Property. Manager shall not incur counsel fees in excess of Five Hundred Dollars (\$500.00) in connection with any particular proceeding unless approved by Owner in writing.
- c. All inquiries concerning the rental of apartments shall be handled by Manager. Any inquiries received by Owner concerning leases or renewals or agreements for the rental or operation of the Property or any part thereof shall be referred to Manager. Any negotiations connected therewith shall be conducted solely by or under the direction of Manager.

### 3.7 **Management Services.**

- a. Manager shall use its best efforts to keep the Property rented at all times.
- b. Manager shall collect, when due, all residential rents and, if applicable, commercial and retail rents; resident and guest parking fees, concession fees, charges; and any and all other



amounts receivable on Owner's account in connection with the management and operation of the Property. Such receipt will be deposited in the Operating Account. Manager will maintain such daily balances in the Operating Account as it and Owner shall from time to time deem prudent. From the funds collected and deposited by Manager in the Operating Account, Manager will make the following disbursements promptly when payable:

- i. Any payment to be made monthly by Owner to a Mortgagee under a Mortgage for principal amortization, interest, reserves, mortgage insurance premium, taxes and assessments, if any, and fire and other hazard insurance premiums.
- ii. All sums otherwise due and payable as Property Expenses that are authorized to be incurred by Manager, including, without limitation, the Management Fee.
- iii. Any amounts remaining in the Operating Account at the close of each work day over the balance determined to be necessary by Owner and Manager for the prompt payment of current obligations shall be transferred, in accordance with prudent cash management practices, into interest-bearing money market accounts (or other instruments offering a comparable return) in the name of Owner, or as otherwise directed by Owner. In the event that the balance in the Operating Account is at any time insufficient to pay in full the disbursements due and payable under this Section, Manager shall so inform Owner and Owner shall, within ten (10) days from receipt of such notice, determine if such disbursements are authorized pursuant to this Agreement. If the disbursements are so authorized, Owner will deposit funds sufficient to cover the deficiency into the Operating Account. However, without the prior written approval of Owner, Owner shall have no such obligation if any disbursement, when added to expenditures previously made in the Fiscal Year, would exceed the Approved Budget. If at the end of any quarter of the Fiscal Year the Operating Account shows a surplus of Revenue over Property Expenses paid or

obligated to be paid, Manager shall make payment of such surplus in one lump sum to Owner, or take such other action with respect to such surplus as Owner may direct in writing.

- c. Manager shall establish and maintain an interest bearing escrow account, in Owner's name, in a commercial bank whose deposits are insured by the Federal Deposit Insurance Corporation, for security deposits given by tenants in accordance with the requirements of Section 8-203(e) of the Maryland Real Property Code Annotated, or comparable provisions of succeeding law (the "**Security Deposits Law**"). Withdrawals from this account shall be for purposes of refunding such deposits or taking such deposits into income resulting from a forfeiture of such deposits by the tenants. All income earned thereon shall inure to the benefit of Owner.
  - i. If a tenant is entitled to a refund of all or a portion of its security deposit, and Manager fails to issue the refund within the timeframe required by the Security Deposits Law, Manager shall be responsible for payment of any and all penalties, fines, and damages (including, without limitation, the tenant's reasonable attorneys' fees) permitted under the Security Deposits Law.
- d. Manager shall establish rent collection procedures, including Manager's processes for rent repayment plans, and collection of past due rent/charges from tenants that no longer reside at the Property. Manager shall obtain Owner's prior written approval before engaging any debt collection agency. Owner may require Manager to utilize Owner's preferred debt collection agency.
- e. Manager shall make or cause to be made all necessary repairs to the Property, to purchase all necessary supplies and materials, and to do all other things necessary to maintain the

Property in a clean, safe, and orderly condition in conformance with the Approved Budget and the Management Plan.

- i. If the Property is designated as a “Troubled Property” per Section 29-22 of the Montgomery County Code, Owner may deduct the costs to remedy the violations from the Management Fee.
- f. In accordance with the Approved Budget, Manager shall keep the Property; its furniture, furnishings, and fixtures; and other equipment appurtenant to the Property in good order and repair. If Manager reasonably believes that in order to keep the furniture, furnishings and fixtures in good order and repair, the Approved Budget should be increased, Manager shall make such recommendation to Owner as part of the budget process. Owner shall fully insure the Property’s furniture, furnishings, and fixtures and other equipment appurtenant to the Property as provided in Section 5.3 below.
- g. Engineering inspection(s) shall be conducted by Manager annually, or as directed by Owner. The visual inspection(s) will focus on examining mechanical and operating systems, as well as all structural components of the Property. Written reports with recommendations will be provided to Owner within thirty (30) days of the inspections.
- h. Manager shall direct a high level of quality control at the Property. As such, its duties will include, but not be limited to: (i) preparing and providing Owner with copies of all bi-annual quality assessment reports; (ii) to ensure quality standards, cause surveys to be provided to and taken by tenants regularly to determine tenants’ level of satisfaction as directed by Owner; (iii) assure highest possible REAC scores, where applicable; and (iv) working with Owner to adopt quality assessment standards and processes at the Property.
- i. Manager shall maintain complete customary loss reports in connection with fire and other damage to the Property, and incidents involving residents, and keep Owner informed of the

status of each such matter through the resolution thereof by supplying such reports and any other correspondence in such form and in such manner as directed by Owner.

- j. Manager shall provide emergency work services to the Property. These services will include a telephone answering service available during all non-business hours, an on-call community manager, and emergency engineering services provided by Manager's engineers. In instances where the community manager is not available, Manager shall maintain an on-call backup property manager who shall be available to assist the Property, as necessary, with emergency services.
- k. Manager shall be required to have training, policies, and procedures that address and implement the following:
  - i. Unit inspections (to formally occur no less than once per year but may require greater frequency based on Owner's direction).
  - ii. Management of all life safety system inspections (Manager will be required to inform Owner of any and all deficiencies that may be found within three (3) days of receipt).
    - i. Life safety systems include, but are not limited to, all fire alarms, emergency pull stations, fire extinguishers, fire sprinklers, burglar alarms, elevators, and emergency pull cords.
  - iii. Maintenance of all third party monitoring on all pull cords and other relevant alarm systems.
  - iv. Performing frequent safety walks of the entire Property including, but not limited to, hallways, stairways, playgrounds, common areas, and green spaces.
  - v. An "Operation and Maintenance Plan", including what to do in the event of a water leak.
  - vi. A "Fire Watch Plan".
  - vii. Annual fire drills, as the building code may require.

- viii. Having a physical presence on-site, when safe to do so, upon notification of an emergency (examples include fire, flood, power outage, and crime incidents).
  - ix. Having a list of units that may require additional assistance in the time of emergency or evacuation.
  - x. Prohibiting staff from cutting gas and/or water lines.
  - xi. Prohibiting staff from performing any “hot work” and requiring third parties to demonstrate a viable hot work policy when the use of heat or flames is necessary to perform their contracted work.
  - xii. Winterization.
  - xiii. Having log sheets for tracking snow/ice removal.
- i. If Manager obtains, or ought to have obtained, actual knowledge of any environmental hazards, Manager shall disclose this information to Owner. By way of example, if Manager observes a contractor or tenant/resident dumping oil on the grounds of the Property, Manager shall be deemed to have obtained actual knowledge, or to “ought to have obtained” actual knowledge of an environmental hazard. Manager has not assumed a responsibility to investigate to determine if any environmental hazards exist. To the best of Owner’s knowledge, the Property has no outstanding violations of environmental laws and the Property has been maintained in compliance therewith.
- m. As required, register and maintain registration of the Property with State authorities with respect to identification of lead based paint hazards, provide applicable notices to tenants, and comply with risk reduction requirements of Subtitle 6 of the Environment Article of the Annotated Code of Maryland (or successor articles) and, as necessary, coordinate remediation, inspection, and repair services.

- n. Manager shall be responsible for the management of any community/recreational rooms at the Property, including assisting tenants with booking such rooms and securing liability waivers that clarify that tenant's use of such rooms is at their own risk and waive all Owner, HOC, and Manager liability.
- o. Manager shall perform all other acts necessary or desirable in the operation and maintenance of the Property in accordance with the terms and conditions of this Agreement and the Approved Budget, as such Approved Budget may be amended from time to time.
- p. When directed by Owner, Manager will be required to use Owner hosted Yardi software and/or AO Docs for all property management and accounting functions, and will have staff proficient in preparing and submitting data and utilizing Yardi software and AO Docs. In such case, licensing fees and user fees will be at Owner's expense. Manager covenants to use commercially reasonable efforts to cooperate with Owner's anticipated Yardi software conversion, including having staff attend training sessions.
- q. Manager shall be at all times responsive to Owner's requests and communications, will deliver required reports in a timely fashion, and Manager and its staff will comport themselves with utmost care and respect towards Owner and Owner's customers.

### 3.8 **Procurement.**

- a. Manager shall follow HOC's Procurement Policy for all purchases at the Property.
- b. Manager shall purchase on behalf of the Property all items which Manager deems reasonably necessary or appropriate for the operation and maintenance of the Property, at competitive prices, including, without limitation, utilities, equipment, expendable supplies, furniture or furnishings, inventory items, machinery, services (including construction services), and supplies; provided, however, that Manager shall not purchase any service, supplies, or equipment the provision for which has not been made in the Approved Budget without the

prior written approval of Owner. Owner understands that Manager is not a vendor and makes no representations or warranties, express or implied, with regard to the goods or services purchased for use at the Property. Manager shall fully disclose to Owner, in writing, any identity of interest relationships between Manager and any vendor, and establish to Owner's satisfaction that the purchase or contract was made pursuant to HOC's Procurement Policy. If required by Owner, Manager shall utilize the procedure established by Owner for the purchase of such goods and supplies including Owner's purchase order process or other mechanism. Manager shall monitor and supervise contractors for services rendered to the Property to reasonably assure compliance with the contracts; if necessary, Manager shall enforce warranties provided by contractors. Manager shall turn over to Owner any rebates or discounts received from any vendor.

- c. **Power to Enter Into Agreements.** Manager shall have the power and authority to make reasonable contracts for terms not to exceed one (1) year (except for leases and except as otherwise approved by Owner), and disbursements necessary to carry out its duties under this Section 3.8(b). Wherever possible, Manager shall use best efforts to seek to include in any contract a provision which allows Owner or Manager to cancel any such contract, without penalty, on thirty (30) days written notice to the other party to the contract. All contracts submitted to Owner for approval in accordance with this Section 3.8(b) shall be accompanied by a brief description of the work or services, the budget authority, summary of bids, and explanation for the selection of the bids. Except as provided herein, all contracts entered into by Manager for Property goods and services shall be entered into by Manager as managing agent for Owner. All contracts entered into by Manager hereunder for the Property shall include provisions that: (1) provide Owner with a copy of all notices of default; (2) provide Owner with an opportunity, but not an obligation, to cure any default; (3) require the

contractor to defend, indemnify, and hold Manager and Owner harmless from and against any and all claims, liability, injury, and costs (including attorney's fees and litigation expenses) arising out of contractor's breach of the contract, failure to perform any obligations under the contract, or contractor's negligent acts or omissions, fraud, or willful misconduct; (4) require the contractor carry sufficient insurance, to be determined by Manager, and, if applicable, to list HOC and Owner as an additional insured and/or loss payee under any such insurance policies; (5) require that contractors are responsible for the acts and omissions of their subcontractors; (6) require that the contractor's insurance is primary and non-contributory; (7) require the contractor to provide to Manager and HOC Certificates of Insurance evidencing their insurance coverage before work is commenced and upon demand of Manger or HOC; and (8) require the contractor to comply with confidentiality provisions the same or similar to those in Section 13.2 for the benefit of HOC and Owner. Notwithstanding the foregoing, Manager shall require that each contractor carry at least \$1,000,000 in commercial general liability coverage (that includes products and completed operations), \$1,000,000 in excess/umbrella coverage, \$1,000,000 in automobile coverage, and statutorily required workers' compensation coverage; Manager must obtain HOC's or Owner's prior written approval prior to accepting less insurance coverage. In the event a contract is for an amount in excess of Twenty-Five Thousand Dollars (\$25,000), in addition to the requirements hereunder, (A) Manager shall submit to Owner copies of contractor's Certificates of Insurance evidencing the types and amounts of insurance carried by contractor, and Owner shall have the right, in its sole discretion, to require the contractor to obtain additional insurance coverage; (2) Manager shall provide Owner with an opportunity to review such contract and Manager shall obtain Owner's prior written approval prior to Manager's execution thereof; (3) Manager shall provide Owner with a copy of the fully executed contract; and (4) Owner



shall, at the request of Manager, provide proof of funds sufficient to satisfy such contract prior to Manager's execution. Any purchases made through contracts that are entered into in conformity with these requirements shall be deemed a Property Expense. However, notwithstanding anything in this Agreement to the contrary, (1) Owner shall not be obligated to reimburse or indemnify Manager for any costs, liabilities, or obligations that are incurred by Manager as a result of Manager's negligence or willful misconduct in relation to the procurement of such goods and/or services; and (2) Manager will indemnify, defend, and hold HOC and Owner harmless for any and all claims, expenses (including reasonable attorneys' fees and litigation expenses), losses, costs, suits, actions, proceedings, demands or liability asserted against or sustained or incurred by Owner, its partners, members, and/or HOC because of Manager's failure to abide by the terms of this Section 3.8(b). Notwithstanding anything in this Section 3.8(b) to the contrary, in the event Manager is acting as construction project manager pursuant to Section 8.2 hereof, Manager will enter into such contract in its own name and will not be acting as Owner's managing agent under any such contract.

- d. **Owner Approval for Contractual Liability in Excess of \$5,000.** Notwithstanding any other provisions of this Agreement, Manager shall in no event incur any expense or liability on behalf of Owner in excess of Five Thousand Dollars (\$5,000) without obtaining the express prior written approval of Owner. Notwithstanding the foregoing, in the case of a deficiency, condition, or code violation, which if not repaired immediately would adversely affect the safety or well-being of the residents of the Property or which constitutes any other type of emergency, Manager shall have the right to make such repairs without the prior approval of Owner, and in that event shall immediately notify Owner of the nature and cost of such repairs.

### 3.9 Financial Management Services.

- a. **Books and Records.** Manager shall establish and maintain at the Property or other location within the State a comprehensive system of records, books, and accounts in a manner satisfactory to Owner which records, books, and accounts will be subject to examination, audit, and copying at reasonable hours by the designated employees and agents of Owner and Mortgagee. For the purpose of Owner's audit requirements, Manager shall permit examination of its financial statements and internal control procedures after reasonable written notice. At any time after giving or receiving the Termination Notice under Article X below, Owner may, without notice to Manager other than the notice provided in that Article, take custody of the books and records of the Property and thereafter assume the maintenance of such books and records and the performance of any and all accounting functions.
- b. **Audit.** Manager shall cooperate, with respect to each Fiscal Year during the Term of this Agreement (and, with respect to the year in which this Agreement commences and is terminated, if this Agreement commences and terminates on a date other than the commencement of the Fiscal Year), with the annual audit as prepared by an independent Certified Public Accountant. The audit will be based on the books and records of Owner and Manager pertaining to the operation of the Property. The audit will be contracted by Owner and Owner will administer the contract. The cost of preparing such report shall be a Property Expense.
- c. **Owner's Access to Manager's Records.** Manager shall make available to Owner at the request of Owner, at a reasonable time and place, Manager's records and those of its affiliated companies, which records relate to goods and services provided to the Property and licensing, inspections, findings, and proceedings by other governmental agencies regarding the

Property. Records and information shall be sufficient to enable Owner to determine the nature of the services performed, the time consumed in providing the services, the charges made for materials, the place at which such materials were consumed, and the per unit and total charges levied for said services. Such records shall be maintained for a period of five (5) years after termination of this Agreement.

d. **Monthly Reports.** Manager shall prepare, or secure the preparation of, the documents/reports listed below and as identified on **Exhibit B** (Reports Distribution List). The types of reports and the submission timing may be changed from time to time to reflect new Owner requirements. In the event a lender or investor charges Owner/HOC a late fee for a late report and the delay is caused by Manager, Manager shall be directly responsible for such cost. At a minimum, the following reports are required:

- i. In such formats as may be required by Owner or Mortgagee and by any governmental agency providing a Subsidy, a monthly statement of receipts and disbursements, balance sheet, statement of changes in cash flow, variance report and narrative, operating statement, and general ledger during the preceding month, with a schedule of accounts receivable and payable, reconciliation of compensation to Manager, and a reconciled bank statement for any and all cash accounts as of the end of the month. Each such statement is to be submitted to Owner within fifteen (15) calendar days after the end of the month covered by such statement except that, in addition to the paper copy, the general ledger will be transmitted electronically in a CSV or excel spreadsheet format by the seventh (7<sup>th</sup>) day of each month.
- ii. An itemized list of all delinquent accounts with accompanying narrative of collection efforts, including rental accounts, as of the tenth (10<sup>th</sup>) calendar day of each month, each

such statement to be submitted to Owner within fifteen (15) calendar days after the end of the month covered by such statement.

- iii. On a monthly basis, or on a more frequent basis as requested by Owner:
  - 1. Unit turnover reports (including move out reasons);
  - 2. Rent schedule reports;
  - 3. Recertification reports, as appropriate;
  - 4. Utility analysis;
  - 5. Capital expense tracking sheet;
  - 6. Income and rent reports;
  - 7. Court case reports;
  - 8. Market study, as required;
  - 9. Security deposit account balance and liability reports;
  - 10. Rent roll; and
  - 11. Eviction status report.
- iv. All incident reports, to be received by Owner within 24 hours of the accident/incident.
- v. All customer satisfaction survey reports (at least on an annual basis).
- vi. Reasonable accommodation reports:
  - 1. On a quarterly basis, requests for reasonable accommodations and final decisions below \$5,000; and
  - 2. Upon receipt from a resident, requests for reasonable accommodations above \$5,000.
- vii. All returns and reports required by taxing authorities.
- viii. Such forms, written reports, and other documents as Owner, governmental authorities having jurisdiction over the Property, lenders, investors, or any other entity providing

financial assistance to the Property or to any resident thereof, may from time to time request or require.

- ix. All reports, findings, and investigative statements provided by any licensing authority for any function or service provided at the Property, each such statement to be submitted to Owner within two (2) days of receipt.
- x. An itemized list of all Property expenses eligible for reimbursement from the replacement reserve and a completed and signed Certification of Eligible Request for Reimbursement, forms of which are attached hereto as **Exhibit J** (such submission, a “RfR”). The list must be submitted monthly together with related invoices, evidence of payment, and a completed and signed Certification of Eligible Request for Reimbursement.
- e. **Annual Reports.** Within thirty (30) days following the end of each Fiscal Year, Manager shall deliver to Owner a profit and loss statement showing all revenues, expenses, and the results of operations for the immediately preceding year as of June 30<sup>th</sup> of such year, all prepared on the accrual basis in accordance with generally accepted accounting principles consistently applied.

### 3.10 **Compliance Services.**

- a. **Duties of Manager.** Manager is responsible for the duties described in Section 3.10(b) (the “**Compliance Responsibilities**”). At the conclusion of each quarter of the Fiscal Year, Manager will be evaluated by HOC’s Compliance Department for its consistent ability to meet the Compliance Responsibilities (the “**Compliance Threshold**”).
- b. **Compliance Responsibilities.** Manager is responsible for the Compliance Responsibilities described in **Exhibit G**.
- c. **Failure to Meet Compliance Responsibilities.**

- i. **First Infraction.** In the event that Manager's compliance performance rating falls below the Compliance Threshold in any given quarter, HOC will require Manager to participate in third-party provided training. Such trainings must focus on the specific Compliance Responsibilities that lead to Manager falling below the Compliance Threshold. HOC will also require Manager to create and submit a corrective plan of action that describes the training completed and all other steps taken to cure the deficiencies and to prevent recurrence. All deficiencies must be cured within ninety (90) days of the first infraction date.
- ii. **Second Infraction.** Following remedy of the first infraction, if the performance rating for any subsequent quarter in the same Fiscal Year falls below the Compliance Threshold, HOC will require Manager to participate in HOC-provided trainings. These trainings will focus on the specific Compliance Responsibilities that lead to Manager falling below the Compliance Threshold. HOC charges ONE HUNDRED FIFTY DOLLARS (\$150.00) per person for each training class provided. HOC will also require Manager to create and submit a corrective plan of action that describes the training completed and all other steps taken to cure the deficiencies and to prevent recurrence. All deficiencies must be cured within sixty (60) days of the second infraction date. HOC will deduct all training fees associated with the second infraction from Manager's Management Fee, and Manager is prohibited from charging these fees to the Property.
- iii. **Final Infraction.** Following remedy of the second infraction, if the performance rating for any subsequent quarter in the same Fiscal Year falls below the Compliance Threshold, HOC may assume performance of some or all of Manager's Compliance Responsibilities for the next quarter. HOC may charge Manager for HOC staff time or ten percent (10%) of the monthly per unit cost for each occupied unit during the time HOC performs the

Compliance Responsibilities in place of Manager. HOC will deduct all fees associated with the final infraction from Manager's Management Fee and Manager is prohibited from charging these fees to the Property. If HOC assumes performance of any of Manager's Compliance Responsibilities, the Compliance Responsibilities will be returned to Manager in the immediately following quarter and the next infraction, if any, will be treated as a First Infraction.

- d. **Failure to Meet Request for Reimbursement (RfR) Responsibilities.** In the event that Manager fails to submit a RfR with all supporting documents no later than the fifteenth (15) day of each month, HOC will deduct five percent (5%) from the Management Fee per month until Manager cures the deficiency. In addition to the late submission fees, HOC will require Manager to participate in third-party provided training. Such training must focus on the requirements of HUD's RfR Fund and the specific Compliance Responsibilities that led to the Manager failing to submit the RfR timely. HOC will also require Manager to create and submit a corrective plan of action that describes the training completed and all other steps taken to ensure RfRs are submitted with all supporting documents not later than the fifteenth (15) day of each month and to prevent recurrence.

- 3.11 **Utilities and Service Contracts.** Manager shall make arrangements, to the extent directed to do so by Owner, for the continued provisions of water, electricity, gas, fuel, cable, internet, and telephone services to, and the removal of sewage and trash and extermination of vermin from, the Property. Manager shall supervise and direct the general operations of the Property and shall turn over to Owner any rebates or discounts from any vendor.

- 3.12 **Other Services.** Manager shall be available to Owner for services rendered and related to activities for which the need may arise and which are not specified in this Agreement. Owner's prior written authorization is required for Manager to provide or subcontract non-routine services. Manager's

compensation for such services performed under this Section shall be negotiated by Manager and Owner at the time the work is authorized, or as noted in this Agreement or its attachments.

#### **ARTICLE IV**

##### **Budget and Other Financial Matters**

- 4.1 **Budget.** Manager shall prepare and deliver to Owner for its approval, and to any federal, state, county or local agency providing a Subsidy to the Property, or any Mortgagee requiring it for its approval, a capital expenditure and operating budget and the Management Plan for the next Fiscal Year of the Property based on the following schedule: not later than one hundred fifty (150) days prior to the end of the previous Fiscal Year for December 31 year-end properties, and not later than two hundred ten (210) days prior to the end of the Fiscal Year for June 30 year-end properties. Manager may be required to prepare a two-year budget with year one being a monthly budget with detailed assumptions and year two being an annual budget with assumptions. Manager may be required to enter all budgets into Yardi software hosted by Owner and have staff proficient in preparing and submitting data and utilizing the Yardi software. The budget, composed of operating and capital budgets, and the business plan shall be in the format as required by Owner and contain such information as may be required by Owner. The capital budget shall outline a program of capital expenditures for the next two (2) Fiscal Years (in which each such expenditure shall be designated as mandatory or desirable) and a five (5) year capital plan. The operating budget shall set forth an estimate of operating revenues and expenses, with line item assumptions and explanations of anticipated changes to resident charges, payroll rates and positions, non-wage costs increases, and all other factors differing from the current Fiscal Year. The budget, as proposed, shall be considered by Owner in consultation with Manager, and, with such revisions as Owner may deem necessary or desirable, shall be adopted by Owner as the Approved Budget. If there is a delay in the adoption of the Approved Budget, or if Owner shall fail to adopt Manager's proposed budget and Manager by



reason thereof gives notice of termination as herein provided, Manager shall operate under the expired Approved Budget plus two percent (2%) until a new budget is approved. Manager shall operate the Property in such manner that the actual revenues, costs, and expenses of the operation and maintenance of the Property during any period of the Fiscal Year of the Property shall be consistent with the Approved Budget, unless otherwise directed or consented to by Owner in writing.

- 4.2 **Charges.** From time to time, as requested by Owner, Manager will recommend for Owner's approval the overall rate structure for the Property in accordance with the limitations imposed by regulatory agreements. All such charges shall take into account the financial obligations of the Property and the level of rates at other comparable facilities. Final approval of rates shall be vested in Owner.

## ARTICLE V

### **Regulatory Requirements/Licensing**

- 5.1 **Qualifications.** Manager is adequately equipped to perform the duties described herein and has qualified to do business in Maryland, and shall, at its own expense, continue during the Term of this Agreement and any renewals thereof to be so qualified.
- 5.2 **Licenses and Permits.** On behalf of the Property, Manager shall obtain and maintain all licenses, permits, and approvals from public authorities as may be necessary for operation of the Property. Manager shall take or cause to be taken all actions necessary or reasonable to substantially and promptly comply with all applicable laws, statutes, ordinances, codes, rules, regulations, and policies of federal, state, county, and municipal authorities concerning the operation of the Property, including but not limited to, the service member's Civil Relief Act.
- 5.3 **Insurance by Owner.**

- a. Owner shall obtain and keep in full force and effect, until expiration or termination of this Agreement and at Owner's cost and expense, the following minimum insurance coverage, and Owner shall provide certificate(s) of insurance certifying such limits:
- i. **Commercial General Liability Insurance.** Commercial General Liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate.  
Manager shall be named as an additional insured under this policy to be reflected on the insurance certificate.
  - ii. **Automobile Liability Insurance.** Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000).  
Manager shall be named as an additional insured under this policy to be reflected on the insurance certificate.
  - iii. **Umbrella/Excess Liability Insurance.** Umbrella/Excess Liability insurance coverage in the amount of Five Million Dollars (\$5,000,000).  
Manager shall be named as an additional insured under this policy to be reflected on the insurance certificate.
  - iv. **Commercial Property Insurance.** Commercial Property insurance protecting against loss or damage in amounts not less than the then current full insurable value of each Property building and the contents owned by Owner (as used herein, the term "full insurable value" shall mean the actual replacement cost of each Property building and its contents as defined in the applicable insurance policy). The Commercial Property insurance shall also include:

1. Boiler and machinery insurance on boilers, pressure vessels, and other machinery in amounts equal to or greater than the amounts as shall be agreed to by Manager and Owner; and
  2. Business interruption insurance covering risk of loss from any loss or damage to a Property building, its contents, boiler, pressure vessels or machinery and any resulting damage thereby rendering such Property untenable or the services to be provided by such Property unmarketable, causing a loss of business, with limits or an amount no less than twelve (12) months of rental value.
- b. Under the policies listed in Section 5.3(a)(i) (Commercial General Liability), 5.3(a)(ii) (Automobile Liability), and 5.3(a)(iii) (Umbrella/Excess Liability), Manager will be an insured while acting as Owner's real estate manager. Owner's Commercial General Liability insurance policy described in Section 5.3(a)(i) will be primary and Owner's insurer will not seek contribution from insurance afforded under such policy while Manager is acting within the scope of its duties as real estate manager; provided, however, this Section 5.3(b) does not apply to Manager's grossly negligent acts or omissions, fraud, or willful misconduct.
- c. Notwithstanding anything in this Agreement to the contrary, Manager acknowledges and accepts that Owner and/or HOC participate in the Montgomery County Self-Insurance Program, Montgomery County Code, Section 20-37 ("**SIP**"), including participating in the SIP for property insurance. The SIP insurance amounts provided in Section 5.3(a)(iv) (Commercial Property insurance) are the maximum limits for which the SIP is responsible. Any obligation or liability of Owner and/or HOC arising in any way from Section 5.3(iv) is subject to, and limited by, the appropriation and availability of funds.
- d. Release and Waiver of Claims. Owner and Manager each release and waive any right of recovery against the other (and against the other's respective officers, commissioners,

directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, volunteers, successors, and assigns), for any bodily injury, property damage, or loss covered by any policy of insurance required by this Agreement, or which would have been covered had the party carried the insurance it was required to carry by this Agreement, or within any self-insured retention (“**SIR**”) or deductible in such policy. No insurance policy required by this Agreement shall prohibit such release and waiver. In addition, the insurance policies required of Owner and Manager by this Agreement shall contain a waiver of claims against the other by the insurer, whether by subrogation or otherwise (and against the other’s respective officers, commissioners, directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, volunteers, successors, and assigns). If any insurance policy required by this Agreement provides that a waiver of subrogation may only be granted by endorsement, Owner or Manager, as the case may be, shall secure an endorsement providing the waiver of subrogation. Notwithstanding anything to the contrary herein, Owner does not release or waive any right of recovery against Manager for any SIR or deductible in the commercial property insurance policy described in Sections 5.3(a)(iv) (the “**Property Deductible**”); provided, however, in the event recovery is sought against Manager, Owner shall be responsible for payment of the Property Deductible if Manager is not otherwise liable pursuant to this Agreement, including Section 7.4.

- e. Owner shall provide thirty (30) days written notice to Manager if any material change to any of the policies is required.

#### 5.4 **Insurance by Manager.**

- a. Prior to the execution of this Agreement, Manager shall obtain and keep in full force and effect, until termination of this Agreement, the following minimum insurance coverage with

insurance company/companies licensed to do business in the State of Maryland and rated A-VIII or better by A.M. Best, evidenced by certificates of insurance. The minimum limits of coverage listed below shall not be construed as the maximum required by contract or as a limitation of any potential liability on the part of Manager, nor shall failure to request evidence of this insurance in any way be construed as a waiver of Manager's obligation to provide the insurance coverage specified.

- i. **Commercial General Liability Insurance.** Commercial General Liability insurance on an occurrence (not claims – made) form which has been endorsed to include contractual liability covering indemnity obligations, premises and operations, independent contractors, products and completed operations, personal injury, assault & battery, sexual abuse & molestation, and broad form property damage arising out of the actions of Manager with a limit of liability of at least Two Million Dollars (\$2,000,000) per claim. Owner shall be named as an additional insured under this policy to be reflected on the insurance certificate.
- ii. **Professional Liability Insurance.** Professional Liability insurance covering all acts, errors, omissions, and negligence committed during the Term of this Agreement with a limit of liability of at least One Million Dollars (\$1,000,000) per claim and Two Million Dollars (\$2,000,000) aggregate. The policy shall provide for a one-year discovery period.
- iii. **Employment Practices Liability** – Employment Practices Liability insurance covering wrongful acts arising from Manager's employment processes with a limit of liability of at least One Million Dollars (\$1,000,000).
- iv. **Automobile Liability Insurance.** Automobile Liability insurance with a minimum limit of at least One Million Dollars (\$1,000,000), combined single limit, for bodily injury and

property damage coverage per occurrence, including owned automobiles, hired automobiles, and non-owned automobiles.

Owner shall be named as an additional insured under this policy to be reflected on the insurance certificate.

- v. **Fidelity Bond or Crime Insurance.** A fidelity bond (also known as employee dishonesty bond or an honesty bond) in the amount of at least Two Million Dollars (\$2,000,000). The bond must cover all employees performing within the scope of services described herein. The bond shall cover loss due to dishonest acts of employees and/or failure to faithfully perform duties. Employee theft coverage evidenced under another crime policy will be accepted in lieu of this bond requirement. The fidelity bond shall be maintained in full force and effect until termination of the this Agreement. The fidelity bond referred to in this subsection (v) may be satisfied by crime insurance.

Owner shall be included as a "loss payee" under this policy as shown on the insurance certificate.

- vi. **Workers' Compensation & Employer's Liability Insurance.** Workers' Compensation and Employer's Liability insurance meeting all statutory requirements of the State of Maryland and with the following minimum employers' liability limits: bodily injury by accident - One Million Dollars (\$1,000,000) each accident; bodily injury by disease - One Million Dollars (\$1,000,000) policy limits; and bodily injury by disease - One Million Dollars (\$1,000,000) each employee.

- vii. **Cyber Insurance.** Cyber insurance in an amount not less than One Million Dollars (\$1,000,000) per claim covering all acts, errors, omissions, negligence, infringement of intellectual property, network / cyber and privacy risks (including coverage for unauthorized access, failure of security, virus transmission, data

damage/destruction/corruption, breach of privacy perils, unintentional or wrongful disclosure of information, as well as notification costs and regulatory defense) in the performance of services under this Agreement. The policy shall contain affirmative coverage for contingent bodily injury and property damage emanating from the failure of the technology services or an error or omission in the content/information provided. Such insurance shall be maintained in force at all times during the Term of this Agreement and for a period of three (3) years thereafter for services completed during the term of this Agreement. Privacy and Network Security coverage shall be maintained with limits of not less than Two Million Dollars (\$2,000,000) per occurrence. The policy shall expressly provide, but not be limited to coverage for the following: (i) the unauthorized use/access of a computer system; (ii) the defense of any regulatory action involving a breach of privacy; (iii) failure to protect confidential information (personal and commercial information) from disclosure; (iv) notification costs, whether or not required by statute; (v) network security liability; (vi) defense costs; and, (vii) privacy liability.

Owner shall be named as an additional insured under this policy to be reflected on the insurance certificate.

- viii. **Tenant Discrimination Insurance.** Tenant Discrimination insurance covering discrimination complaints by tenants at the Property, including, but not limited to, discrimination based on race, gender, disability, religion, sex, familial status, national origin, and age, with a limit of liability of at least One Million Dollars (\$1,000,000). Manager's Tenant Discrimination policy shall be primary for all claims where the allegations fall under the operational requirements and expectations of Manager.

Owner shall be named as an additional insured under this policy to be reflected on the insurance certificate.

ix. **Umbrella/Excess Liability Insurance.** Umbrella/Excess Liability insurance coverage with a limit of liability of at least Five Million Dollars (\$5,000,000).

Owner shall be named as an additional insured under this policy to be reflected on the insurance certificate.

b. **Insurance Expense.** Other than Manager's Professional Liability insurance (Section 5.4(a)(ii)) and Manager's Employment Practices Liability insurance (Section 5.4(a)(iii)), which shall be maintained at Manager's sole cost and expense (inclusive of all retentions), the insurance coverage otherwise required by Section 5.4(a) that is solely attributable to the Property shall be charged to the Property based on a total on-site payroll cost basis or a per-unit pro rata basis. Manager shall submit all insurance invoices and supporting documentation at the time the Property is billed and shall not include any premiums, surcharges, or additional fees. At no time shall Owner be responsible to pay or reimburse Manager for any deductible, retention, or co-pay over \$15,000.

c. **Insurance Notices.** All of Manager's policies required by this Section 5.4(a) shall be endorsed to provide that Owner shall receive thirty (30) days written notice of cancellation of any of the policies. Manager shall provide thirty (30) days written notice to Owner of any material change to any of the policies. If changes in the Property necessitate a change in insurance coverage, Owner, after consultation with Manager, shall determine what additional insurance (and amounts) that shall be carried for the Property, whether by separate coverage or by the extension of any blanket insurance coverage already obtained or thereafter to be obtained by Owner or Manager. All insurance will be placed, or continued in effect with such companies, on such conditions, in such amounts, and with such beneficial interests appearing thereon as shall be required by, or acceptable to Owner, and shall otherwise be in conformity with any Mortgage on the Property. Manager shall timely provide Owner with certificates



issued by the insurer evidencing such insurance, which policies shall be cancelable only upon not less than thirty (30) days' written notice by the insurer to Owner and any Mortgagee. Manager shall periodically review the insurance requirements of the Property and make recommendations to Owner regarding same, which Owner may accept in its sole discretion. Manager will investigate all accidents, claims, and potential claims for damage relating to the Property, its residents, staff, and visitors, and will cooperate with Owner's insurance in connection therewith.

- d. **Additional Insureds.** In the event Owner is a limited partnership or limited liability company, Manager agrees to specifically name all general and limited partners or all members, as applicable, as additional insureds/loss payees (as applicable) to the insurance policies required pursuant to this Agreement.

5.5 **Duties of Manager in Event of Fire or Other Casualty.** In the event of fire or other casualty, epidemic or other public health emergency, or force majeure (herein collectively a "**Major Event**") Manager will continue at all times thereafter to exercise its best efforts to provide to the Property and its residents the same level of service that was provided prior to such Major Event; in no event shall Manager rely on the occurrence of such Major Event or its after effects as grounds for termination or suspension of any such services or as grounds for termination of this Agreement, except with the approval of Owner. Manager shall take all reasonable steps to prevent further injury and/or property damage, and must notify Owner in writing if additional assistance may be required.

5.6 **Regulatory Requirements.**

- a. Manager shall comply with the requirements of the Housing Choice Voucher Program, FHA Risk Sharing Requirements, and any other applicable regulatory agreements recorded against the Property.

- b. If Owner is a participant in the low income housing tax credit program administered under Section 42 of the Internal Revenue Code of 1986, Manager shall operate the property and its tenancy in accordance therewith, and in accordance with any extended use agreement, which shall be attached as **Exhibit I** hereto.

5.7 **Compliance with Governmental Orders.** Manager will take such actions as may be necessary to promptly comply with any and all governmental orders or other requirements affecting the Property, whether imposed by federal, State, County, or municipal authority. Nevertheless, Manager shall take no action so long as Owner is contesting, or has affirmed its intention to contest, any such order or requirement. Manager will notify Owner in writing of all notices of such orders or requirements within two (2) business days of receipt thereof.

5.8 **Compliance with Section 3 or HOC Works.** Manager will comply with the following requirements when marked as applicable below:

Manager will comply with the Section 3 Requirements attached as **Exhibit E**.

Manager will comply with the HOC Works Requirements and the HOC Works Plan prepared by the Manager attached as **Exhibit F**.

## **ARTICLE VI**

### **Obligations, Rights of Owner**

6.1 **Access to Property.** Owner shall provide to Manager undisturbed access to the Property. Manager shall allow scheduled and unscheduled visits by Owner for purposes of inspection, including, but not limited to grounds, maintenance, housekeeping, and risk management.

6.2 **Owner's Right of Entry.** Owner, by its employees and agents, shall during the Term of this Agreement have the unrestricted right of entry into the Property for any purpose whatsoever, including the right to speak to residents in the presence of personnel of Manager or outside their

presence, as Owner or the residents wish. The right of Owner under this section shall be exercised in such manner as to minimize unreasonable disruptions to the daily routine of the residents and the operation of the Property.

- 6.3 **Consultations.** Manager shall make its consultants and/or employees available to Owner for consultation and advice in areas of Property operation, including, without limitation, accounting, auditing, budgeting, business office management, human resources and personnel development, marketing, finance, government programs, insurance, building maintenance, engineering, management development, public relations, purchasing, quality assurance, systems and procedures (including computer systems), third party reimbursement, and other areas of operation as Manager may have available in the future or which are, in the reasonable judgment of Owner, required to enable Manager to carry out its responsibilities under this Agreement. Such consultants and/or employees hired and retained by Manager shall be provided to Owner at no charge to Owner or the Property. Notwithstanding the foregoing, should Owner request a type, form, or level of service that such personnel or consultant of Manager do not provide, Manager shall locate and make available such service, the cost of which shall be a Property Expense when approved by Owner, in advance of contracting for the services.
- 6.4 **Owner Status.** Owner shall at all times maintain its status as a corporation in good standing in the State of Maryland.
- 6.5 **No Covenants or Restrictions.** Throughout the Term of this Agreement, Owner shall not enter into or cause the imposition of any covenants or restrictions concerning or affecting the Property that would have a material adverse effect upon current revenues from the Property, or would further prohibit or limit Manager from managing the Property in a manner consistent with applicable laws, rules, and regulations.

6.6 **Payments to Manager.** Owner shall make all payments to Manager subject to the terms of this Agreement.

## ARTICLE VII

### **Legal Actions, Liability & Indemnity**

#### 7.1 **Legal Actions.**

- a. Owner's or Owner's appointed counsel shall be the lead counsel in any legal action arising out of the ownership or operation of the Property where Owner or HOC is named as plaintiff or defendant, or third party plaintiff or defendant, in such action, or if Owner has assumed the responsibility of indemnification of Manager. Manager's or Manager's appointed counsel shall be the lead counsel in any legal action instituted or defended by Manager wherein Owner and/or HOC is not named as a party and has no interest in the outcome. Manager or Manager's appointed counsel shall also be the lead counsel in any legal action wherein Manager has assumed the responsibility of indemnification of Owner and Owner and/or HOC has consented to Manager's appointment as lead counsel. Manager shall not institute or defend any legal action affecting the Property without notice to Owner and Owner's and/or HOC's consent. Unless in an action or proceeding the interest of Owner and/or HOC and Manager shall be in conflict, Manager shall advise and assist Owner and/or HOC in prosecuting or defending all actions or administrative proceedings, at every level, arising out of the ownership or operation of the Property.
- b. Notwithstanding the requirements of Section 7.1 above, if a defense will be provided with respect to the insurance coverage carried for the Property, then upon Owner's and/or HOC's

consent, counsel provided by the insurance company shall be lead counsel with respect to such claim.

7.2 **Legal Fees and Costs.** In the event that either party elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover such legal expenses, including without limitation attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled or awarded.

7.3 **Liability of Manager**

- a. Manager agrees to exercise, with respect to all services provided by Manager under or pursuant to this Agreement, a high and qualified standard of care, skill, and diligence such as is at least comparable to that which would normally be provided by an experienced manager with respect to work similar to the services to be provided under this Agreement, and as is necessary for the maintenance of any license or permit required for the Property. Manager agrees to exercise its best efforts to exercise due diligence to collect any outstanding debts owed to the Property.
- b. Manager shall not be responsible for the acts or omissions of any other contractor or subcontractor of Owner, or of Owner's employees, or any other persons representing Owner performing any services for or in connection with the Property, or any consultants or other persons engaged by Owner with respect thereto, unless, and only to the extent that Manager has employed such contractor, subcontractor, or employee (including pursuant to Section 3.8 hereof), Manager is supervising, or should be supervising the work of such party.

7.4 **Indemnity to Owner.** Manager will defend, indemnify, and hold Owner and HOC, and their respective directors, commissioners, officers, affiliates, partners, members, subsidiaries, agents, students, licensees, employees, volunteers, and representatives (together with Owner and HOC, "**Owner Parties**") harmless from and against any and all claims, expenses (including reasonable

attorney's fees and litigation expenses), losses, costs, suits, actions, proceedings, demands, regulatory violations, or liabilities asserted against or sustained or incurred by Owner Parties because of Manager's breach of this Agreement, failure to perform any obligations under this Agreement, grossly negligent acts or omissions, fraud, or willful misconduct. Included in the foregoing indemnities to Owner Parties are all reasonable costs and expenses, including attorney's fees, properly and actually incurred by Owner in connection with any proceedings to defend any action or claim covered by this section, or to enforce the indemnity, or both. Recovery upon an indemnity provided for in this section is reduced dollar for dollar by recovery from any other source collected by Owner and/or HOC. This indemnification shall survive expiration or termination of this Agreement.

7.5 **Indemnity to Manager.**

- a. Owner will, to the extent permitted by County law (including, without limitation, the LGTCA (defined in Section 7.5(c)), indemnify and hold Manager harmless from and against any and all claims, expenses (including reasonable attorney's fees and litigation expenses), losses, costs, suits, actions, proceedings, demands, regulatory violations, or liabilities asserted against or sustained or incurred by Manager because of Owner's breach of this Agreement, failure to perform any obligations under this Agreement, grossly negligent acts or omissions, fraud, or willful misconduct. Included in the foregoing indemnities to Manager are all reasonable costs and expenses properly and actually incurred by Manager in connection with any proceedings to defend any action or claim covered by this section, or to enforce the indemnity, or both. Recovery upon an indemnity provided for in this section is reduced dollar for dollar by any recovery from any other source collected by Manager. This indemnification shall survive expiration or termination of this Agreement.

- b. Notwithstanding anything in this Agreement to the contrary, Owner shall indemnify and hold harmless Manager and its stockholders, directors, officers, employees and agents from and against any and all claims, actions, suits, proceedings, losses, costs and expenses, including reasonable attorney's fees and disbursements, related to Owner's failure to comply with the FHA/ADA Requirements or the ADA provisions for removal of barriers to accessibility for the disabled or any other comparable federal, State, or local laws, and for Owner's refusal, after notice from Manager, to approve and implement changes in the physical improvements, lease documents, or such policies and procedures necessary for compliance with all such non-discrimination laws. This indemnification shall survive termination of this Agreement.
- c. In accordance with law, any and all of Owner's and/or HOC's obligations and liabilities arising in any way from this Agreement are subject to, limited by, and contingent upon the appropriation and availability of funds. Any indemnification given by Owner and/or HOC in this Agreement is limited by the damage caps and notice requirements stated in the Local Government Tort Claims Act, Md. Code Ann., Cts. & Jud. Proc. §§ 5-301 et seq., (the "LGCTA"), as may be amended from time to time. Any increase in the LGCTA damage caps shall apply to this Agreement automatically. Any indemnification given by Owner and/or HOC in this Agreement is not intended to create any rights or causes of action in any third parties, or to increase Owners and/or HOC's liability above the damage caps provided in the LGCTA. Furthermore, nothing in this Agreement shall be construed as a waiver of any rights, defenses, notice requirements, or limitations of liability available to Owner and/or HOC under the LGCTA.

7.6 **Personal Liability.**

- a. In the event of a claim by Manager against the Property and Owner, Manager's recourse shall be limited to the provisions of this Agreement. Manager shall have no recourse against the

commissioners, officers, partners, directors, employees, or volunteers of Owner or HOC or the directors, officers, or employees of a Mortgagee, saving and excepting recourse solely relating to intentional wrongdoing by such individuals acting outside their scope of employment.

- b. In the event of a claim by Owner or HOC against Manager, Owner's and/or HOC's recourse shall be limited to the provisions of this Agreement. Owner and HOC shall have no recourse against the officers, directors, or employees of Manager, saving and excepting recourse solely relating to intentional wrongdoing by such individuals acting outside their scope of employment.

## ARTICLE VIII

### Compensation to Manager

- 8.1 **Compensation to Manager.** Manager's Management Fee is described in **Exhibit H.**
- 8.2 **Construction Project Management.** Manager's construction project management responsibilities are described in **Exhibit H.**

## ARTICLE IX

### Subordination and Attornment

- 9.1 **No Property Interest in the Property.** This Agreement, and the performance thereof by Manager, confers on Manager no right, title, or interest in or to the Property, and Manager has no rights against the Property or against Owner other than those conferred by this Agreement.
- 9.2 **Manager's Rights Subordinate to Mortgagees.** This Agreement and any renewals, extensions, or modifications thereof, and all rights and interests of Manager therein shall at all times be subject and subordinate to any and all financing instruments of and to the rights and claims of a Mortgagee thereunder. This provision shall be unconditional and self-operative, but, at the request of Owner



or a Mortgagee, Manager shall execute any instrument submitted to it in confirmation of the foregoing provisions.

9.3 **Continuation Upon Foreclosure.** In the event a Mortgagee comes into possession of or acquires title to the Property by any means arising out of the default of Owner under any financing instrument, the Mortgagee may, at its option:

- a. continue this Agreement as successor to Owner and continue to pay the fees payable to Manager hereunder for the satisfactory performance of services to Owner, for the balance of the term of this Agreement, or for such other period as the Mortgagee may in its sole discretion determine; or
- b. terminate this Agreement without obligation to Manager for any fees payable to Manager subsequent to the effective date of such termination.

9.4 **Manager to Attorn to Mortgagee.** In the event that Mortgagee or any assignee of the Mortgagee comes into possession of or acquires the Property and elects not to terminate this Agreement as aforesaid, Manager agrees to attorn to Mortgagee and to be bound to Mortgagee under all of the terms, covenants, and conditions of this Agreement for the balance of its Term, to the same force and effect as if the Mortgagee were an original party to this Agreement, and said attornment shall be effective and self-operative as an agreement between Manager and the Mortgagee, without execution of any further instruments on the part of any party hereto, immediately upon the succession by the Mortgagee to the interest of Owner in the Property. The Manager agrees, however, to execute such other instruments as the Mortgagee may submit to it in confirmation of the foregoing provisions.

## ARTICLE X

### Termination & Expiration

#### 10.1 Termination For Cause.

- a. This Agreement may be terminated by either party for cause, upon the occurrence of an “**Event of Default,**” as defined below, and upon the expiration of any cure period to which the defaulting party may be entitled under Section 10.1 below. An Event of Default is defined as:
- i. The filing of a petition to be adjudicated as bankrupt or for reorganization under the bankruptcy laws of the United States.
  - ii. The filing of a petition against a party to have it adjudicated as bankrupt and the failure on the part of the party to have such petition dismissed within sixty (60) days after filing.
  - iii. An assignment for the benefit of creditors made by a party.
  - iv. The appointment pursuant to a judicial proceeding of receiver or trustee of a party's rights or interests and the failure of such party to obtain the dismissal of such proceeding and the discharge of such trustee or receiver within thirty (30) days after such appointment.
  - v. The failure of a party to make any payment required to be made under this Agreement within thirty (30) days after receipt of notice by such party that the non-defaulting party elects to treat such non-payment as an Event of Default.
  - vi. The failure of a party to perform any other material covenant or condition in this Agreement required on its part to be performed or kept, and such default remains uncured for a period of thirty (30) days after notice thereof from the non-defaulting party or, if such default is curable but cannot be cured within thirty (30) days, if within such cure period the defaulting party does not initiate promptly and pursue diligently such cure to the reasonable satisfaction of the non-defaulting party.

- b. Upon the occurrence of an Event of Default and the expiration of any applicable cure period without cure or effort to cure as set forth in subsection 10.1(a) above, the non-defaulting party may terminate this Agreement upon five (5) days' notice to the defaulting party.
- c. In the event of the termination of this Agreement pursuant to Section 10.1(a) and (b) above, the non-defaulting party may exercise any remedy available to it at law or in equity, including without limitation, the retention of any amounts due from the non-defaulting party to the defaulting party upon the date of termination and the application of any such amounts against damages incurred by reasons of such default, to the extent that such retention and application is consistent with any other remedies elected by the non-defaulting party.
- d. In the event of termination of this Agreement pursuant to this Section 10.1, Manager shall assist Owner with the transition of the Property commencing as of the date of the Event of Default until the date of termination, including, but not limited to transferring all tenant documents and files to Owner in a timely fashion. Notwithstanding anything in this Agreement to the contrary, Owner may withhold the final Management Payment until all documents and files are transferred to Owner.

10.2 **Termination By Reason of Causes Beyond Control of Owner.**

- a. In the event that any time while this Agreement shall be in effect any portion of the Property is destroyed or damaged, in whole or in part, and if, by reason of such destruction or damage, Owner thereafter elects not to rebuild the Property at that time, it is expressly understood and agreed by and between Owner and Manager that Owner shall have the right to terminate this Agreement on thirty (30) days' written notice to Manager (the "**10.2 Termination Notice**"). Manager shall assist Owner with the transition of the Property commencing as of the date of the 10.2 Termination Notice until the date of termination, including but not limited to transferring all tenant documents and files to Owner in a timely fashion. Notwithstanding anything in this Agreement to the contrary, Owner may withhold the final Management Payment until all documents and files are transferred to Owner.
- b. Any Mortgagee shall have the right to terminate this Agreement with or without cause, on thirty (30) days' written notice to Owner and Manager; except that in the event of a default by Owner under any Mortgage or regulatory agreement, such Mortgagee shall have the right to terminate this Agreement immediately without notice, but the prompt advice of such action shall be given to Owner and Manager. Upon receipt of such notification, Owner shall make satisfactory arrangements for continuing proper management of the Property.

10.3 **Termination Without Cause.**

- a. This Agreement may be terminated, in whole or in part, by Owner at any time Owner determines, in its sole discretion, that, for any reason, termination is in its best interest. Owner shall send a notice (the "**Termination Notice**") to Manager stating the date of the termination, which shall not be less than thirty (30) days after the date of such Termination Notice. Manager shall be paid the Management Fee through the date of termination but shall incur no additional obligations to third parties without Owner approval after receipt of the

Termination Notice. Manager shall assist Owner with the transition of the Property commencing as of the date of the Termination Notice until the date of termination, including, but not limited to transferring all tenant documents and files to Owner in a timely fashion. Notwithstanding anything in this Agreement to the contrary, Owner may withhold the final Management Payment until all documents and files are transferred to Owner.

10.4 **Return of Records and Funds.**

- a. Within ten (10) days after the effective date of termination:
  - i. All amounts required to be paid by one party to the other by reason of termination under this Article shall be paid by cashier's check, certified check, or received by its bank by wire transfer; and
  - ii. Owner and Manager shall account to each other with respect to all matters outstanding as of the date of termination. Owner shall furnish Manager security against any outstanding obligations or liabilities which Manager may have incurred hereunder.
- b. At the expiration or earlier termination of this Agreement, Manager shall forthwith, but in no event later than ten (10) days after the expiration or termination of this Agreement, deliver to Owner or submit to its control all records, documents or other instruments, waiting lists, accounts, and any other files and papers in its custody or possession relating to the Property and Manager's performance under this Agreement, and transfer to Owner all funds related to and accounts opened on behalf of the Property or Owner.
- c. At the expiration or earlier termination of this Agreement, Manager will turn over to Owner all funds and evidence of ownership thereof, including passbook accounts, negotiable and investment instruments, and demand deposits and petty cash, less a mutually agreeable amount to cover estimated amounts due suppliers of services and goods, utilities, payroll taxes, and other expenses and obligations of Owner ordered or incurred in the name of

Manager on behalf of Owner. As to any invoices in dispute by Owner, Owner agrees to retain ultimate responsibility to the provider of such services or goods represented by an invoice in dispute.

## **ARTICLE XI**

### **Statutory and Regulatory Requirements**

11.1 In accordance with the Approved Budget, Manager shall cause all things to be done in and about the Property necessary to comply with the requirements of any applicable constitution, statute, ordinance, law, rule, regulation, or order of any governmental or quasi-governmental regulatory body or agency, or board of fire underwriters respecting the use of the Property or the construction, maintenance, and operation thereof. If Manager reasonably believes that in order to comply with the requirements of any applicable constitution, statute, ordinance, law, rule, regulation, or order of any governmental or quasi-governmental regulatory body or agency, or board of fire underwriters, the Approved Budget should be increased, Manager shall make such recommendation to Owner as part of the budget process. Manager shall obtain and maintain in effect all County, State and federal permits and licenses needed for its management services and the Property. Manager shall keep its corporate organization in good standing and shall maintain all permits and licenses required by said jurisdictions.

## ARTICLE XII

### **Non-Discrimination Requirements**

- 12.1 **Equal Employment Opportunity.** Without limiting any other provisions of this Agreement, Owner and Manager expressly agree to abide by any and all applicable federal and/or State equal employment opportunity statutes, rules, and regulations, including without limitation, Title II of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, the Occupational Health and Safety Act of 1970, and the Americans With Disabilities Act, all as may be from time to time modified or amended.
- 12.2 **Equal Housing Opportunity.**
- a. Without limiting any other provisions of this Agreement, Owner and Manager expressly agree to abide by any and all applicable federal, State and County equal housing opportunity statutes, rules, and regulations, as from time to time may be modified or amended, prohibiting discrimination in housing on the grounds of race, color, sex, creed, national origin, source of income, familial status, or disability, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 Stat. 241). This includes all requirements imposed by, or pursuant to, the Regulations of the Secretary of HUD (24 CFR, Subtitle A, Part 1) issued pursuant to that Title, and regulations issued pursuant to Executive Order 11063 and Title VIII of the 1968 Civil Rights Act.
  - b. In the performance of their respective obligations under this Agreement, the parties 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 disability, and other nondiscrimination laws such as Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, the Age

Discrimination Act of 1975, and the Americans with Disabilities Act, and the Fair Housing Act, as applicable (collectively, the “**Fair Housing Laws**”).

- i. Manager is required to participate in training that focuses on compliance with the Fair Housing Laws. Manager must take its first training within three (3) months of the Effective Date and must take a refresher training every year.
  
- c. Manager shall be responsible for accepting and determining eligibility for all requests for reasonable accommodations under the Fair Housing Laws from applicants and tenants of the Property, including requests for live-in aides. Manager will make the decision to accept, modify, or reject an eligible request if the cost to the Property of the performance of the request for a reasonable accommodation does not exceed Five Thousand Dollars (\$5,000.00). The amount so expended shall be deemed an Owner approved expenditure. With respect to an eligible request for a reasonable accommodation under the Fair Housing Laws that is estimated to cost more than Five Thousand Dollars (\$5,000.00), Manager will make a recommendation to Owner whether to accept or reject, Owner will decide whether to accept or reject the request, and Owner will assume any legal liability associated with such decision. Manager shall provide the required reasonable accommodation reports as provided in **Exhibit B**. At the request of Manager, Manager may consult with HOC’s Fair Housing and Equal Opportunity Officer for guidance regarding reasonable accommodations and other fair housing compliance questions.
  
- d. Manager will complete an annual self-certification in the form attached hereto as **Exhibit C** to confirm that company policies of Manager are in compliance with the Fair Housing Laws, and specifically as they relate to reviewing and processing reasonable accommodation requests.

### 12.3 **Language Assistance.**



- i. Without limiting any other provisions of this Agreement, Manager expressly agrees to make reasonable efforts to provide language assistance to Property residents with Limited English Proficiency (“LEP”). LEP individuals include any individual whose primary language is not English and/or is limited in their ability to read, write, speak, or understand English, including LEP due to disability. Language assistance includes, among other things, providing written translations or oral interpretations of documents, Property-related procedures and/or rules, and any other necessary communications between Manager and tenants. Upon Manager’s request, HOC will provide information and resources that Manager may use to provide language assistance. HOC may request documentation of Manager’s internal procedures for ensuring language assistance is being provided to Property residents, including requesting a list of resources Manager uses to assist LEP individuals.
- ii. Manager is required to participate in HOC-provided training that focuses on compliance with LEP-related laws and regulations. Manager must take its first training within three (3) months of the Effective Date and must take a refresher training every five (5) years.
- iii. Notwithstanding anything in this Agreement to the contrary, in the event any Owner Parties are named in any third party claim/suit/action/complaint due to Manager's provision (or lack thereof) of language assistance to LEP individuals, Manager shall defend, indemnify, and hold such Owner Parties harmless per Section 7.4 of this Agreement.

## **ARTICLE XIII**

### **Ownership of Ideas & Confidentiality**

- 13.1 **Proprietary Items.** The systems, methods, procedures, and control employed by Manager in the performance of this Agreement are proprietary in nature, shall be and shall remain the property of

Manager, and shall not at any time be utilized, distributed, copied, or otherwise employed by Owner without the express written consent of Manager.

- 13.2 **Confidentiality of Information**. Manager agrees to keep confidential all files; reports; documents (including this Agreement); data; financial information; marketing materials; trade secrets; technology; information of any kind whatsoever concerning HOC's and Owner's clients and residents either individually or as a class; information relating to the past, present, and future business affairs of HOC and Owner; and any other information (whether received via written, electronic, or verbal communication) (the "**Confidential Information**") that Manager has received, acquired, reviewed, generated, or assembled in connection with this Agreement. Manager agrees that it will not utilize the Confidential Information for its personal benefit and agrees that it will not disclose other otherwise make such Confidential Information available to any individual or organization without the prior written approval of HOC. If production of documents or information is compelled by legal process, Manager will notify HOC and Owner prior to responding so that Owner may seek to oppose production, if necessary, by appropriate legal means. This section shall survive the expiration or termination of this Agreement.

#### **ARTICLE XIV**

##### **Miscellaneous**

- 14.1 **Right to Perform**. In the event that either party fails to perform any duty or fulfill any obligation hereunder to the material detriment of the other, the other party, in addition to any rights or remedies available to it under law or in equity, shall have the right, but not the obligation, to

perform any such duty or fulfill any such obligation, but in no way obligating the party beyond any termination period allowable hereunder.

- 14.2 **Assignment and Subcontracting.** Manager agrees that it will not assign or transfer this Agreement nor any right or claim Manager may have hereunder except with the prior written approval of Owner.
- 14.3 **Changes in Ownership or Management of Manager.** Prior to public notification, Manager shall advise Owner of any change of twenty-five percent (25%) or more in the ownership of Manager, including the identity of any new owners and changes in supervisory management or operation of Manager.
- 14.4 **Changes in Portfolio of Manager.** Owner acknowledges that Manager has an extensive and often changing portfolio of more than twenty-five (25) properties owned and managed in the Washington Metropolitan area.
- 14.5 **Conflict of Interest.** No member, officer, or employee of Owner or HOC, no member of a governing body from the locality in which the Property is situated, no member of a governing body from the locality in which Owner or HOC was activated, and no other public official of such a locality shall exercise any function or responsibilities with respect to the work described in this Agreement during his or her tenure, or, for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.
- 14.6 **Incorporation by References.** Every exhibit, schedule, appendix, or attachment to this Agreement and referred to herein shall be incorporated by reference in this Agreement and made a part hereof.
- 14.7 **No Waiver.** The failure of either party to this Agreement to insist upon strict performance of any term or condition of this Agreement, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue to remain in full force and effect. No waiver by either

party of any term or condition hereof shall be deemed to have been made unless expressed in writing signed by such party. No express waiver of any term, condition, covenant, or provision hereof by either party shall constitute a waiver of any other term, condition, covenant, or provision hereof or a waiver of any future performance under the same term, condition, covenant or provision.

14.8 **No Third Party Beneficiaries.** No person, firm, corporation, or entity not a party to this Agreement shall be entitled to rely upon or demand enforcement of any term, covenant, condition, agreement, or understanding set forth and contained herein.

14.9 **Consents, Approval and Discretion.** Except as expressly provided herein to the contrary, whenever this Agreement requires any consent or approval to be given by either party or either party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably exercised, withheld, or delayed, and such discretion shall be reasonably exercised in good faith.

14.10 **Notices.** All notices, demands, consents, approvals, and requests associated with day-to-day operation of the Property are to be delivered by hand, email, courier, fax, or regular mail between Owner's assigned Asset Manager and Manager's designee. All notices, demands consents, approvals, and requests associated with termination, renewal (as expressly provided in this Agreement), amendment, or material breach of this Agreement given by either party to the other hereunder shall be in writing and shall be sent by hand, by overnight courier, or by registered or certified mail, postage prepaid, to the parties at the below addresses. Either party may change the below addresses by providing written notification of such change to the other party. Notices shall be effective upon receipt and refusal to accept delivery shall constitute receipt.

Owner:

[Owner]  
c/o Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

Owner's Representative: Chelsea J. Andrews, Executive Director  
Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

Copy to: Office of General Counsel  
Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

Copy to: Property Management  
Housing Opportunities Commission of Montgomery County  
10400 Detrick Avenue  
Kensington, Maryland 20895

Manager: [Manager's Name]  
[Address]

Copy to: [Manager's Attorney]

14.11 **Severability**. If any term or provision of this Agreement, or the application thereof to any person or circumstance, is held to be invalid or unenforceable, all other terms and provisions of this Agreement shall not be affected thereby, and all other terms and provisions of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

14.12 **Choice of Law: Venue**. The parties agree that this Agreement shall be governed by and construed in accordance with the laws, including application decisional law and conflicts law, of the State of Maryland. The courts and administrative agencies of the State of Maryland shall be the exclusive venue for any litigation or proceeding between the parties that may be brought, or arise out of or in connection with, this Agreement.

14.13 **Entire Agreement and Amendment**. With respect to the subject matter hereof, this Agreement supersedes all previous contracts and constitutes the entire agreement between the parties, and no party shall be entitled to benefits other than those specified therein. As between the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force

and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements not expressly incorporated herein, whether written or verbal, are superseded, and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by both parties hereto. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and which together shall constitute one and the same instrument. Each party represents that it has received all approvals necessary to enter into and perform its obligations under this Agreement and that its execution, delivery, and performance of this Agreement has been duly and validly authorized. This Agreement shall be binding on the parties hereto and their permitted successors and assigns.

14.14 **Division and Headings**. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect whatsoever in construing the provisions of this Agreement.

14.15 **Extension by Agreement**. HOC may extend the term of this Agreement for up to an additional ninety (90) days.

**[Signature Page Appears on the Next Page]**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement for Property Management Services to be executed under seal by their duly authorized officers, as of the day and year first above entered.

**WITNESS/ATTEST**

\_\_\_\_\_

**OWNER**

**[Name of Owner]**

By: Housing Opportunities Commission of Montgomery County, its \_\_\_\_\_

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

Name: Chelsea J. Andrews

Title: Executive Director

**WITNESS/ATTEST**

\_\_\_\_\_

**MANAGER:**

**[Manager's Name]**

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

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

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

**EXHIBIT A**

**PROPERTY DESCRIPTION**



**EXHIBIT B**

**REPORTS DISTRIBUTION LIST**

**EXHIBIT C**

**FAIR HOUSING AND REASONABLE ACCOMMODATIONS SELF-CERTIFICATION FORM**

**EXHIBIT D**

**CONTRACTOR/SUB-CONTRACTOR BACKGROUND SCREENING REQUIREMENTS**

**EXHIBIT E**

**SECTION 3 PROGRAM REQUIREMENTS**

**EXHIBIT F**

**HOC WORKS PROGRAM REQUIREMENTS**

**EXHIBIT G**

**COMPLIANCE RESPONSIBILITIES**

**EXHIBIT H**

**COMPENSATION TO MANAGER & CONSTRUCTION PROJECT MANAGEMENT**

**EXHIBIT I**

**REGULATORY AGREEMENT**



**EXHIBIT J**

**CERTIFICATION OF ELIGIBLE REQUEST FOR REIMBURSEMENT & SUMMARY RECAP OF RFR  
REIMBURSEMENT REQUEST**