

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT made this ___th day of _____, 19___, by and between HOUSING AUTHORITY OF _____ ("Owner") and _____

WITNESSETH:

WHEREAS, Owner is the owner of certain improved real property and the improvements thereon known as _____ consisting of _____ apartments located at (city & state) _____, which real property and improvements are referred to herein as the "Property",

WHEREAS, Operator has represented that it possesses superior skills and experience in the provision of residential property management services, and

WHEREAS, Owner desires to obtain the services of Operator for the purpose of managing and operating the Property, and Operator desires to provide such services.

NOW, THEREFORE, IN CONSIDERATION OF the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Operator agree as follows:

ARTICLE I APPOINTMENT OF OPERATOR

Owner hereby appoints Operator and Operator hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and lease the Property.

ARTICLE II TERM

2.1 TERM. The initial term of this Agreement will be for _____ days from, _____ 19,___ to _____, 19___ and month to month thereafter; provided, however, that the total term of this Agreement shall in no event exceed two years.

2.2 EARLY TERMINATION. Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon the occurrence of any of the following:

(A) In the event of a sale, condemnation of the Property, or destruction of twenty-five percent (25%) or more of the Property, either party may terminate this Agreement upon thirty (30) days written notice to the other party.

(B) If a petition in bankruptcy is filed by or against either party, or if either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, the other party may terminate this Agreement upon ten (10) days written notice to the other party.

(C) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority, Operator may terminate this Agreement upon ten (10) days written notice to Owner unless Owner is in good faith contesting same, pursuant to Section 4.2(j) herein.

(D) If either party defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to the defaulting party specifying such default, the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30 day period then the party not in default shall not effect the termination.

(E) Sixty (60) days after written notice terminating this Agreement if such notice is delivered during any initial term longer than thirty (30) days, and otherwise thirty (30) days after written notice terminating this Agreement. Notice of termination shall be provided by one party to the other in accordance with Section 9.5. Notice of termination may be given at any time without cause or penalty. The respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon termination of this Agreement for any reason:

(A) Operator shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(B) Operator will immediately deliver to Owner, at no cost to Owner, all Books, Records, and Documents (as herein defined) maintained by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;

(C) Operator shall render to Owner an accounting of all funds of Owner held by Operator relating to the Property and shall immediately cause such funds to be paid to Owner; and

(D) Operator shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

ARTICLE III **COMPENSATION**

The compensation of Operator for its services hereunder shall be fixed and paid as provided in **Exhibit A** attached hereto and incorporated herein by this reference. Management fees shall be paid in monthly installments. Operator shall invoice Owner on the tenth (10th) of the month for fees payable on current collections. Fees shall be reconciled each month and approved by Owner in advance. In the event of commencement or termination of this Agreement other than on the first or last day of a month, respectively, the compensation of Operator shall be prorated to the effective date of such commencement or termination.

ARTICLE IV
DUTIES AND RESPONSIBILITIES

4.1 GENERAL RESPONSIBILITIES OF OPERATOR. Subject to the provisions of this Agreement, Operator is hereby authorized to manage, operate and lease the Property in accordance with the standards of practice of professional managers (possessing the same superior skills and experience of Operator) of similar properties in the location of the Property and to provide other customary management services at the Property for the ordinary and usual business and affairs of the Property as are consistent with the management, operation, leasing, and maintenance of a building or buildings of the type located on the Property.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF OPERATOR. Operator agrees and is hereby granted authority to do the following:

(A) Collection of Moneys. Operator shall use commercially reasonable efforts and means to collect the rents and other charges due from tenants, parking charges, and all other charges, and revenues, and, when deemed economically appropriate by Operator and approved by Owner, to institute legal proceedings on behalf of Owner for collection in connection with the operation of the Property. Owner authorizes Operator to request, demand, collect, receive, and receipt for collection thereof, all sums due Owner and for the lawful dispossession of tenants, guests, and other persons from the Property. Counsel shall not be used for actions taken in small claims court or similar administrative proceedings which Operator's non-legal staff should be capable of handling.

(B) Books, Records and Documentation. Operator shall maintain at its (County & State) leases, amendments, extensions and agreements relating to contracts and leases; files, correspondence with tenants and prospective tenants; computations of rental adjustments; tenant income and other records required to verify satisfaction of Low Income Housing Requirements (as defined below); maintenance and preventive maintenance programs, schedules and logs; tenant finish and construction records; inventories of personal property and equipment; correspondence with vendors; job descriptions; correspondence with federal, state, county, and municipal authorities; brochures and accounts held or maintained by Operator, and; all other books, records and documentation required to be prepared or kept by Operator under the terms of this Agreement (all such books, records, and documents being referred to herein as "Books, Records, and Documents"). Unless otherwise instructed by Owner, in writing, books and records of account shall be prepared in conformity with generally accepted accounting principles consistently applied at Operator's sole expense. Except as approved in writing by Owner, herein, all accounting functions shall be performed by those personnel of Operator whose compensation is payable solely by Operator without reimbursement by Owner and except as provided herein Owner shall not be liable (and Operator shall pay) for the cost of any computer accounting and outside accounting services. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at reasonable times and at no cost to Owner. Operator shall render to Owner, on or before the 10th of each month, a financial and management report as of the end of the prior month - including without limitation profit and loss statements, balance sheet, cash reconciliation statement, and reports as to the status of the Security Deposit Account and Construction Account, if any. Monthly accounting reports shall be in a format approved by Owner. Operator shall also, at the request of Owner, furnish such further accounting and fiscal information in a manner sufficient to respond to Owner's financial

information requirements. All Books, Records and Documents shall be the property of Owner even though prepared by or in the possession of Operator.

(C) Annual Audit. When requested by Owner, at the end of each fiscal year of the Property and as of the date of termination of this agreement, Operator shall arrange and coordinate an annual audit of the books and records of the Property made by a firm of certified public accountants approved by Owner. At the request of Owner, Operator shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is deemed to be a cost of the Owner.

(D) Repairs and Maintenance. Operator will use due professional care to maintain the condition of the Property in a first class condition, will regularly inspect the readily accessible areas of Property, will take ordinarily prudent precautions against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. However, Operator, shall make no expenditures in excess of \$2,500 for repairs, without the prior written consent of Owner, unless the expenditure for such repairs has been approved in the Annual Budget (defined below), except as to any emergency repairs to the Property immediately necessary for the preservation or safety of the Property or for the safety of persons or which are required to avoid suspension of necessary services to the Property. Operator shall maintain written records of inspections of the Property, maintenance and repair requests, maintenance and repair work, fire alarm and suppression equipment maintenance, and other similar activities. Such records shall be made available to Owner and for Owner's defense in any tort claims or litigation.

(E) Capital Assets.

(i) Operator shall make no expenditures in excess of \$1,000 for alterations, capital improvements, renovations or replacements of furniture, fixtures or equipment, unless such expenditure is contained in the Annual Budget, without the prior written approval of Owner. Notwithstanding the above, the approved Annual Budget with proper documentation, shall be deemed authorization for Operator to make budgeted expenditures without prior approval by Owner provided that a) the amount of the expenditure is within five percent (5%) or \$2,000 of the originally approved amount, whichever is less; and b) Operator submits evidence of expenditure satisfactory to Owner.

(ii) Operator shall make no disposition of capital assets with an original value in excess of \$1,500 without the prior written approval of Owner. In any event, Operator shall provide a record to Owner of all dispositions of fixed assets after such dispositions have been made.

(iii) Before undertaking any alterations, capital improvements, renovations or repair work costing in excess of \$5,000 ("Major Work"), Operator shall obtain three or more bids. All contractors hired to perform Major Work shall be required to pay to all workers wages at the _____ satisfactory completion of the Major Work and receipt of all necessary approvals and documentation.

(F) Service Contracts and Equipment Leases. Operator is authorized to make and enter into for the account of Owner all contracts and equipment leases as are required in the ordinary course of business for the operation, maintenance, and service of the Property and to pay the same when due; provided however, Operator shall be required to obtain the prior written

consent of Owner before entering into any contract or equipment lease for the account of Owner in which (i) the total amount payable exceeds \$5,000 or (ii) the term exceeds one (1) year, unless such contract or lease is made under circumstances which shall reasonably be considered to constitute an emergency. Notwithstanding the foregoing, Operator shall use its best efforts to contact and secure prior approval of Owner in the event any such emergency expenditure should be likely to exceed \$5,000.

(G) Supplies and Inventory.

(i) Operator shall, on behalf of Owner, purchase such supplies and expendable items as are necessary to operate the Property. When taking bids or issuing purchase orders, Operator shall use its commercially reasonable and prudent efforts to secure for Owner's benefit any discounts, commissions, or rebates obtainable in connection with such purchases.

(ii) Operator shall conduct a physical inventory of the personal property, materials, and equipment used in connection with the Property at the commencement and termination of the Agreement and at the end of each fiscal year. Such inventories shall be maintained with other Books, Records and Documents.

(H) Insurance

(i) Owner shall cause to be placed and kept in full force and effect an extended coverage insurance policy for the Property insuring against fire and other perils. Insurance coverage shall be in conformance with the bond or other lender covenants relating to the financing of the Property, if any.

N/C (ii) Owner and Operator shall each, at their own expense, carry commercial general liability insurance with limits of coverage for bodily injury and property damage liability of not less than \$1,000,000 per occurrence and not less than \$2,000,000 policy general aggregate and each party shall provide evidence to the other that the insurance is being maintained in effect along with evidence that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days' advance notice is given to the nonprocuring party. Owner's participation in a governmental risk sharing pool shall be deemed to satisfy Owner's insurance requirements under the preceding sentence. Each party shall also name the other as an additional insured on their respective policies to the extent of each party's indemnification obligations under this Agreement. It is further agreed that Operator's liability insurance shall be primary with respect to Operator Employee Claims (as defined below), and not contributing with any other insurance maintained by Owner notwithstanding any inconsistent provisions in any such policies maintained by Owner and shall not require contribution by any insurance or self-insurance maintained by Owner on any basis, pro rata or otherwise.

N/C (iii) For purposes of the preceding paragraph, Operator Employee Claims shall be defined as any and all claims, demands, suits, actions or judgments which actually or allegedly arise from the acts or omissions of Operator or its officers, agents, employees or contractors, except such as may have been caused solely by the negligence of Owner. To the extent a claim is brought against Owner as the result of an Operator Employee Claim, such claim against Owner shall be deemed to be an Operator Employee Claim. For example, if Operator's bookkeeper fails to deposit a tenant security deposit in a residential landlord/tenant trust account as required by law, and the tenant therefore brings a claim against Owner for violation of such

law, then such claim shall be an Operator Employee Claim covered by Operator's liability insurance.

N/C (iv) Operator shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss thereunder uncollectible.

(v) Operator, at Owner's expense, shall cause to be placed and kept in force Workers' Compensation insurance as required by the State of _____ for all Property Employees (defined below).

(vi) Operator, at Owner's expense, shall furnish a fidelity bond in an amount sufficient to cover all employees employed by Operator who shall be responsible for handling any monies belonging to the Owner which come under custody or control of Operator. Fidelity Bonds shall at a minimum conform to the following coverage:

<u>Coverage</u>	<u>Deductible</u>	<u>Min. Limit</u>
Employee Dishonesty (Faithful performance)	\$1,000	\$100,000
Forgery or alteration	\$1,000	\$100,000
Theft, disappearance, destruction, inside/outside	\$1,000	\$ 10,000

(I) Debt Service, Taxes and Assessments. Operator shall pay debt service, taxes, impositions, or assessments relating to the ownership or operation of the Property (including without limitation improvement assessments, real estate taxes, personal property taxes, taxes on income or rents, and any charges similar to or in lieu of any of the foregoing) only as directed in writing to do so by Owner. When requested by Owner, Operator shall verify bills for real estate, personal property or other taxes, improvement assessments, and other similar charges which are or may become liens against the Property or which may be levied on the basis of ownership or operation of the Property. When requested by Owner, Operator shall render advice and assistance to Owner in the negotiation and prosecution of all claims for the reduction or equalization of property tax assessments and other tax assessments affecting the Property. Operator shall annually make a review of, and submit a report on, all real estate, personal property and other taxes and all assessments affecting the Property. Operator shall timely file all personal property tax returns after execution of such returns by Owner. Operator acknowledges that Owner is a municipal corporation exempt from the assessment and payment of real estate taxes and personal property taxes. To the extent this Agreement refers to the payment of real estate or personal property taxes, such references shall be deemed to be deleted.

(J) Compliance with Legal Requirements. Operator shall use reasonable means to become aware of, and shall take such actions as Operator deems prudent and necessary to comply with, any laws, orders, or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency or authority, provided that if the cost of compliance in any instance exceeds \$2,500, Operator shall not expend funds for compliance without Owner's prior written consent. Operator shall promptly notify Owner in writing of all such orders, notices or requirements requiring expenditure of non-budgeted amounts. Operator,

however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order or requirement. Operator shall prepare, execute, and, after obtaining the written approval of Owner, file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement. Operator covenants and agrees to obtain and maintain, at Operator's sole expense, all licenses and permits necessary for the conduct of its business as Operator of the Property.

(K) Energy Conservation. Operator shall use prudent and customary means to use and control utilities at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

(L) Advertising. Operator shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the Annual Budget approved or Owner's prior written approval.

(M) Employment of Personnel.

N/C (i) Operator will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Operator and not of Owner. Owner shall have no right to supervise or direct such employees. Operator will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature as well as long term employment.

(ii) The salaries, wages, other compensation and fringe benefits (including without limitation social security, taxes, worker's compensation insurance, and the like), and travel, entertainment and other expenses shall be non-reimbursable expenses of Operator with respect to the following persons working on or in respect to the Property:

(a) Executive Personnel and employees of Operator charged with general administration of Operator's performance of this Agreement, and with the general supervision, direction, and control of personnel listed hereinafter in this section.

(b) A Property Manager (Off Site Supervisory Manager) for the Property who shall be experienced in the administration and operation of an asset of the size, character, and quality of the Property and who shall devote such time as is necessary to the on-site supervision of the Property to permit its operation on a basis comparable to other such properties.

(c) Bookkeepers and Accountants (off-site).

(d) Record-keeping personnel (off-site).

(e) Additional secretaries (off-site).

(f) Purchasing personnel (off-site).

(iii) The salaries, wages and other compensation of the following employees of Operator working on or in respect to the Property ("Property Employees") shall be expenses of Operator reimbursable by Owner from operating income of the Property:

(a) On-Site Manager. A full-time person who is experienced in the administration and operation of an asset of the size, character, and quality of the Property.

(b) Lead Maintenance Person. A full-time, general purpose building engineer/maintenance person with background and experience in the administration and operation of repair and maintenance programs in an asset of a size, character, and quality of the Property. Such person shall be capable of and may perform minor maintenance and repair on the Property.

(c) Such other personnel required to operate and maintain the Property including, but not limited to, assistant to the On-Site Manager, on-site rental agents, air-conditioning mechanics, electricians, plumbers, painters, carpenters, groundskeepers, janitorial and custodial persons, and security guards. Such personnel must be approved in writing by Owner prior to employment unless the compensation to be paid is budgeted for in the Annual Budget approved by Owner.

The salaries, wages, and compensation of the Property Employees shall be deemed to be expenses of Operator reimbursable by Owner only to the extent their time is devoted to the Property as evidenced by payrolls and time logs certified by Operator. In addition, the Property Employees' so-called fringe benefits, medical and health insurance, group life insurance and employee related costs including but not limited to social security, payroll taxes, workers' compensation and the like, shall also be reimbursable expenses of Operator to the same extent as wages. No moving expenses or educational expenses of any Property Employees will be paid or reimbursed by Owner unless in the approved Annual Budget or unless Owner has given its prior written approval. However, all reasonable automobile travel expense incurred by the On-Site Manager shall be an expense of Owner so long as (1) the On-Site Manager maintains a contemporaneous written log of the date, purpose and distance of such travel, and (2) any travel outside of _____ County is approved in advance in writing by Owner. Mileage shall be reimbursed by Owner at the same rate as the standard mileage rate allowed by the Internal Revenue Code as a deduction for business automobile travel for income tax purposes. No travel expenses other than mileage (i.e., automobile repairs, food, lodging, incidentals) shall be an expense of Owner unless approved by Owner in advance in writing.

(N) Leasing.

(i) The Operator shall make diligent efforts to secure and/or retain tenants for the Property recognizing that the goal of leasing is to achieve the highest possible occupancy at rental rates consistent with budgetary projections and that are affordable to current and prospective tenants. Operator shall in good faith conduct such investigations of the financial responsibility and general reputation of prospective tenants, as are ordinarily and customarily performed by the managers of similar properties in the location of the Property. Operator shall also obtain from current and prospective tenants such household income or other information which Owner requires from time to time. Owner shall have the authority to establish (and from time to time change) monthly rent amounts, dwelling lease terms and provisions and leasing policies governing the admission, occupancy and eviction of tenants. Owner further reserves the right to establish incentives and/or rent concessions as needed in order to carry out Owner's policy goals.

(ii) Operator and Owner recognize that (State or Federal regulations pertaining to the property) requires that _____ percent (___%) of the dwelling units be rented to households at or below _____ percent (___%) of the _____ County median income, adjusted for family size, as established annually by the U.S. Department of Housing and Urban Development ("Low Income Housing Requirements"). The Property may be subject to additional Low Income Housing Requirements related to the financing of the Property or other legal requirements. Operator shall operate the Property in such a manner as to at all times comply with the Low Income Housing Requirements. Owner shall keep Operator advised of the applicable Low Income Housing Requirements. To assure that the Low Income Housing Requirements are satisfied, Operator will submit a monthly report to Owner containing such information as Owner shall require and including Operator's certification of the income of the Property tenants in accordance with procedures established by Owner. If the Property is not in compliance with the Low Income Housing Requirements at the commencement of the term of this Agreement, then Operator shall cause the Property to comply with the Low Income Housing Requirements as quickly as possible and in any event within twelve months after the commencement date of this Agreement.

(iii) At the same time as Operator submits the proposed budgets as provided for hereunder, it shall include recommendations for changes to the Rent Schedule.

ARTICLE V **EXPENSES OF OWNER**

Except as otherwise provided in this Agreement, all obligations incurred to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Owner and shall be for its account. All reasonable expenses, including fees for necessary legal advice, incurred by Operator in performance of its obligations under this Agreement shall be reimbursed by Owner to the extent they are described as reimbursable in this Agreement (subject to the Owner approved Annual Budget or other Owner approval requirements of this Agreement). Such expenses and reimbursables shall be paid with funds drawn from the General Account in accordance with Article VII hereof.

ARTICLE VI **EXPENSES OF OPERATOR**

Operator agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel described in Section 4.2(m) of this Agreement as an expense of Operator without reimbursement by Owner, except as provided in Subsection 4.2(m)(iii). Operator shall pay other expenses which are expressly (a) payable by Operator or (b) not reimbursable hereunder. Operator shall also pay (without reimbursement) any costs of providing office facilities and supplies for such personnel and other expenses incurred by Operator which are not incurred in performance of duties and obligations required by this Agreement.

ARTICLE VII
BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

(A) Owner shall establish a "Depository Account," which shall be used for the deposit of all funds received from the operation of the Property, unless Owner agrees in writing that the General Account (as hereafter defined) shall be used for such purpose. The "Depository Account" shall be under the sole control of Owner.

(B) Operator shall establish a "General Account," in its name in trust for Owner in a bank or other institution approved or selected by Owner, which is a centralized disbursement account, the funds of which shall be used to pay the normal and reasonable expenses incident to the operation and maintenance of the Property pursuant to this Agreement and as requested by Owner. The General Account shall also be used to pay debt service relating to the Property if requested by Owner pursuant to Section 4.2(i). The General Account may be used for other properties of the Owner but shall not be used for properties owned by any person or entity other than Owner.

(C) Operator shall establish a "Security Deposit Account," as required by applicable law, for the retention of security deposits delivered in connection with leases of any portion of the Property. The Security Deposit Account shall be in both Owner's and Operator's name in an account in a federally insured national or state bank in (County & State) approved or selected by Owner. The total amount of deposit shall at no time exceed the federally insured limit. The Security Deposit Account is to be established solely for the Property and shall contain no funds other than deposits collected in connection with operation of the Property. Operator shall not commingle any of its own funds with the funds in the Security Deposit Account. All funds deposited in the Security Deposit Account shall be held in trust by Operator for Owner (or the tenants of the Property as applicable). Both Operator and Owner shall have the right to draw checks on the Security Deposit Account.

(D) Owner is aware that a centralized disbursement account for Owner's properties may be used for the payment of normal and reasonable expenses as described in Section 7.1(b) above. The use of said account shall not be construed as a violation of the terms of this Section 7.1. Operator may also maintain a petty cash fund from money in the General Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business. Such petty cash fund shall be subject to the same rules and restrictions set forth above as are applicable to the bank accounts.

(E) All Accounts established by Operator shall be interest bearing unless the cost of establishing an interest bearing account exceeds the anticipated interest accrual. All interest shall be the property of Owner.

7.2 TRANSFER OF FUNDS. Owner shall regularly transfer funds from the Depository Account to the General Account in the amount needed for disbursements made by Operator from the General Account on behalf of the Property and in accordance with this Agreement. Operator shall regularly deliver to Owner Operator's written request for the amount of funds to be transferred by Owner from the Depository Account to the General Account ("Funds Transfer Request"). Operator's Funds Transfer Request shall be accompanied by invoices, Operator's

check register for the Property and payroll information ("Supporting Information") supporting Operator's Funds Transfer Request. Owner shall review the Supporting Information and approve it or request further information from Operator such that the Funds Transfer Request (or so much of it as is approved by Owner) can be satisfied within three business days after the date the Funds Transfer Request and all Supporting Information is received by Owner.

7.3 FUNDS PROVIDED BY OWNER. If the funds collected by Operator from operation of the Property are not sufficient to pay the expenses incurred and authorized to be paid in operation of the Property and to make all reimbursements to Operator pursuant hereto, Operator shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall immediately advance funds sufficient to pay same to the Operator.

7.4 PROHIBITED USES OF FUNDS. Operator may not use any funds of Owner for any purpose other than the management of the Property as provided in this Agreement. Among other things, Operator may not use any funds of Owner for rebates, kickbacks, or bribes, nor shall any such funds be contributed to any political party, committee, or campaign of any candidate for public office.

ARTICLE VIII **ANNUAL BUDGETS**

8.1 SUBMISSION OF BUDGETS. At the commencement of this Agreement, and thereafter at least 45 days prior to the beginning of each fiscal year, Operator shall prepare and submit to Owner for Owner's review and approval or revision proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties (collectively referred to as "Annual Budget"). The proposed Annual Budget will show the estimated income and expenses on a month by month basis for the fiscal year and will be made in accordance with accounting practices prescribed, in writing, by Owner. Operator will include a detailed explanation for the numbers used in such budgets. Owner shall provide to Operator to facilitate budget preparation, 60 days prior to the beginning of the fiscal year, the following information: estimates of Property debt service payments, insurance expense related to the Property and paid by Owner, Owner overhead allocated to the Property, and replacement reserve expense. Owner shall also provide to Operator 60 days prior to the beginning of the fiscal year Owner's required debt coverage ratio for the coming fiscal year ("Owner's Debt Coverage Ratio").

8.2 SUBMISSION OF OTHER REPORTS. With each submittal of a proposed Annual Budget to Owner, Operator shall also include: market analysis; rental rate recommendations; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period, and; a payroll analysis including a salary or wage description for every Property Employee of Operator whose compensation is reimbursable hereunder.

8.3 APPROVAL OF BUDGETS. Owner agrees that if objection to the proposed Annual Budget is not given within thirty (30) days after Owner's receipt of the proposed Annual Budget, Operator may assume approval and operate within the proposed Annual Budget until notified otherwise by Owner in writing. To the extent reasonable, Operator shall eliminate or revise any

item or amount in the Annual Budgets which is disapproved by Owner to the extent necessary to obtain Owner's approval.

8.4 COMPLIANCE WITH BUDGETS. The Annual Budget, after approval by Owner, shall be used by Operator as a guide for the actual operation of the Property. Except as expressly provided otherwise in this Agreement, Operator agrees not to make any expenditure for the maintenance and operation of the Property which would result in either (A) a particular category of the Annual Budget being exceeded by more than **five percent (5%)**, (B) the amount of total expenditures under the Annual Budget being exceeded by more than **five percent (5%)**, or (C) the debt coverage ratio for the year being below Owner's Debt Coverage Ratio, without in each case obtaining the prior written approval of Owner. For purposes of the preceding sentence, the debt coverage ratio for the year shall equal (i) the gross income of the Property for the year as defined in the attached **Exhibit A** less all operating expenses for the year, divided by (ii) the total debt service payments for the year. The operating expenses in the calculation of the debt coverage ratio for the year shall include all Owner paid expenses of which Owner advises Operator before preparation of the Annual Budget for the fiscal year, all operating expenses paid by Operator, and all management fees; the operating expenses shall exclude debt service and the cost of capital improvements. Owner may change the method of calculation of the debt coverage ratio by written notice to Operator from time to time.

ARTICLE IX **GENERAL PROVISIONS**

9.1 RELATIONSHIP.

(A) Notwithstanding the foregoing, it is understood and agreed that all contracts and obligations entered into by Operator with respect to the Property as provided for in, and consistent with, this Agreement ("Property Contracts") shall be the obligations of Owner and Owner agrees to indemnify, defend and hold Operator harmless from any liability or claims arising from the Property Contracts except for any breach of the Property Contracts caused by Operator.

N/C (B) Operator and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Operator understands and agrees that its relationship to Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor.

9.2 ASSIGNMENT. This Agreement is not assignable by Operator. With prior written notice to Operator, this Agreement may be assigned by Owner.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 CLAIMS BY ONE PARTY AGAINST THE OTHER AND INDEMNIFICATION.

N/C (A) Operator shall at its sole cost and expense defend, indemnify and hold Owner harmless from and against any and all claims, demands, suits, actions or judgments (and against all attorneys' fees, court costs and expenses related thereto or in enforcing this indemnity) which

actually or allegedly arise from or are in any manner connected with the performance of or failure to perform the duties of Operator as set forth in this Agreement, or which actually or allegedly arise from the negligence or intentional acts of Operator or its officers, agents, employees or subcontractors, except such as may have been caused solely by the negligence of Owner.

N/C (B) Owner shall at its sole cost and expense defend, indemnify and hold Operator and its affiliates, officers, directors, shareholders, agents and employees, harmless from and against any and all claims, demands, suits, actions or judgments (and against all attorneys' fees, court costs and expenses related thereto or in enforcing this indemnity) which actually or allegedly arise solely from the negligence or willful misconduct of Owner or its officers, agents or employees.

(C) Survival. The provisions of this Section 9.4 shall survive the expiration and any termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by hand delivery or by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: _____

ATTN: _____

TO OPERATOR: _____

ATTN: _____

N/C 9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No amendments to this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

N/C 9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of _____. Venue shall take place in the County of _____, State of _____.

9.9 OPERATOR. The term "Operator" as used in this Agreement shall include any corporate subsidiaries or affiliates of Operator who perform services in, on or about the Property in connection with this Agreement.

N/C 9.10 ATTORNEY'S FEES. If any party hereto brings suit to enforce or declare the meaning of any provision of this Agreement, the prevailing party, in addition to any other relief, shall be entitled to recover reasonable attorneys' fees and costs, including any on appeal and including attorneys' fees and costs incurred in pursuing collection or enforcement of the prevailing party's awards.

ARTICLE X

ENVIRONMENTAL CONDITIONS

10.1 OWNER'S REPRESENTATIONS AND WARRANTIES. Owner represents and warrants to Operator that Owner has made or will make prior to commencement of the term of this Agreement full and complete disclosure to Operator of all toxic or hazardous substances in, on or around the Property (collectively referred to as "Hazardous Substances") known or suspected by Owner to exist and Owner will provide Operator with copies of all studies, reports, testing results, surveys, operations and management plans performed by or for Owner or its predecessor or other such information in Owner's possession or control concerning or referring to Hazardous Substances and/or environmental conditions in, on or around the Property. Hazardous Substances include, without limitation, any substance regulated by Federal, State or local governmental agencies as dangerous to the health or safety of building occupants, PCB's, asbestos, substances known or suspected to be cancer causing, underground storage tanks of any kind, and any other contaminant or material reasonably considered to be potentially harmful to human health or safety. Owner represents and warrants that it has no knowledge or information concerning any Hazardous Substances except as clearly disclosed to Operator in writing as provided in this paragraph.

10.2 INDEMNIFICATION. Owner shall defend, indemnify and hold Operator and Operator's affiliates, officers, directors, shareholders, agents and employees (collectively referred to as "Operator Parties") harmless from any and all claims, losses, liabilities, suits, actions or proceedings of any kind arising out of or relating to the presence of any Hazardous Substances on the Property, excepting only such claims, losses, liabilities, suits, actions or proceedings which result (i) solely from the negligence or willful misconduct of any of the Operator Parties, or (ii) from Hazardous Substances introduced to or brought upon the Property by any of the Operator Parties or any other person or entity under the control of any of the Operator Parties. Operator shall defend, indemnify and hold Owner and Owner's affiliates, officers, directors, shareholders, agents and employees harmless from any and all claims, losses, liabilities, suits, actions or proceedings of any kind arising out of or relating to the presence of any Hazardous Substances on the Property, and which result (i) solely from the negligence or willful misconduct of any of the Operator Parties, or (ii) from Hazardous Substances introduced to or brought upon the Property by any of the Operator Parties or any other person or entity under the control of any of the Operator Parties.

10.3 OWNER'S RESPONSIBILITY. Except as expressly provided in this Agreement, Operator is not required to take any action or to enter into any contract or agreement with third parties for the removal, disposal, or abatement of Hazardous Substances, whether now known and disclosed by Owner or subsequently discovered. Any such contract or agreement shall be made directly by Owner for Owner's own account.

10.4 OPERATOR'S RESPONSIBILITY. Operator shall use reasonable care to comply on Owner's behalf with the provisions of any operations and maintenance plan prepared by or for Owner with respect to any Hazardous Substances from and after such time as a copy of such plan is provided to Operator. If Operator believes that compliance with any such plan provided after the date of this Agreement would make Operator's performance of this Agreement more burdensome or expensive, Operator shall submit a written request to Owner to increase Operator's compensation to cover such additional burden or expense. Operator shall also promptly inform Owner in writing if it discovers any Hazardous Substances which have not been disclosed by Owner to Operator. Operator shall notify its employees of any Hazardous Substances known by Operator to be located in any areas where its employees might reasonably be expected to come in contact with them and shall take such steps as are required of an employer under applicable law with respect to such conditions and circumstances. Operator shall also at Owner's expense provide and post such public notices as may be required by the laws of the State of _____ with respect to any Hazardous Substances or environmental conditions of the Property disclosed by Owner or discovered by Operator to exist in, on or around the Property.

11.0 EXHIBIT A. **Exhibit A** attached to this Agreement is incorporated by this reference as though fully set forth here.

OWNER:

Housing Authority

By

Name

Title

Date

OPERATOR:

By: _____

Its: _____

By: _____

Its: _____

Dated: _____

EXHIBIT A
to Management and Operating Agreement

Compensation

As compensation for its services under this Agreement, Operator shall receive a fixed fee of \$2,100 per month plus a sum equal to three and one-half percent (3.5%) of the monthly gross income (MGI) in excess of \$60,000. Expressed as formula:

$$\text{Monthly fee} = \$2,100 + [(.035) (\text{MGI} - \$60,000)]$$

Compensation shall be payable to Owner within ten (10) days of receipt of invoice from Operator. Operator shall provide an invoice and supporting documentation for the fee which will be based on gross income between the eleventh (11th) calendar day of the previous month and the tenth (10th) calendar day of the month in which the invoice is provided to the Owner.

Gross Income shall mean all amounts actually collected (net of refunds) by the Operator as rents or other charges for use and occupancy of the Property including furniture rental, miscellaneous fees, parking, receipts from coin operated machines, nonrefundable deposits, forfeited deposits, laundry income and television income. Gross income shall not include the following:

1. Fire and Extended Coverage loss reimbursements received or accrued unless they relate to "lost rents" or business interruption proceeds which shall be included in gross income.
2. Tax rebates received or accrued.
3. The portion of revenue determined to be a bad debt.
4. Proceeds from the sale of assets received or accrued.
5. Interest income received or accrued.
6. Discounts of any kind.
7. Income from apartments rented to Operator's employees.

Gross Income shall otherwise be determined in accordance with generally accepted principals of accounting, consistently applied using a cash basis.

An administration fee of \$140 per hour will be paid to Operator by Owner for all capital improvement projects in excess of \$3,000 which are of a non-recurring nature, provided that the

capital improvement projects and extra administration fees are approved by Owner in advance in writing.

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