PROPERTY MANAGEMENT AGREEMENT

THIS PROPERTY MANAGEMENT AGREEMENT (“Agreement”) is effective as of the 1st day of November, 2017 (the “Effective Date”) by and between\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a District of Columbia limited partnership (hereinafter referred to as the “Owner”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a Virginia corporation (hereinafter referred to as “Manager”).

**PREAMBLE**

IdenTIfication of property and basic terms

The project to which this Agreement relates (the "Project") and certain basic terms of this Agreement are as follows:

Name of Project:

Street Address:

# of Units:

Anticipated Management Fee

Commencement Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Manager Contact:

Owner Contact:

Management Fee: As provided in Section 15

Proposed Budget Date:

Approved Software: \_\_\_\_\_\_\_\_\_

**BACKGROUND**

A. Owner is the owner of that certain project located at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ known as\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ which Project consists of \_\_\_\_\_\_\_\_ rental apartment units and certain common areas and other space (collectively, the “Project”).

B. Owner has retained \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (collectively, “Owner’s Consultants”) in connection with the development of the Project.

C. Owner wishes to retain the services of Manager to work with Owner and Owner’s Consultants for the marketing, management planning, lease-up, operation, management and servicing of the residential portion of the Project.

**SECTION 1**

**APPOINTMENT OF MANAGING AGENT**

1.1 APPOINTMENT AND ACCEPTANCE: Owner hereby engages Manager as its sole and exclusive property manager to lease and manage the Project upon the terms and conditions provided herein. Manager accepts the engagement and agrees to furnish the services of its organization in accordance with the terms and provisions contained herein.

1.2 TERM: The initial term of this Agreement shall be for a period of twelve (12) months (the “Initial Term”) commencing on the Effective Date (the “Commencement Date”). This Agreement shall be automatically renewed for a period of one (1) year, unless this Agreement is terminated as provided in Section 18 herein.

1.3 MANAGEMENT OFFICE: Owner shall provide adequate space on the Project for a management office, for the use of Manager to conduct the business of the management of the Project (the “Management Office”). Owner shall pay all reasonable expenses related to such office as provided in the Plan (defined below), including, but not limited to, furnishings, equipment, postage, office supplies, electricity, other utilities, and telephone services.

1.4 APARTMENT FOR ON-SITE STAFF: Owner may elect to provide suitable apartment unit(s) within the Project for the use of the resident manager and such assistant managers or maintenance personnel as Manager and Owner may deem reasonable under the circumstances and in accordance with the Plan. Manager, with the approval of Owner, shall be entitled to provide such on-site staff (employees) with such rental concessions (reductions in rent) as Manager and Owner may deem necessary and appropriate under the circumstances; provided, however, that such rental concessions shall not be more than twenty percent (20%) of the market rents then being paid for similar units in the Project.

1.5 BUDGET AND BUSINESS PLAN: Owner and Manager will establish a budget and business plan for operation and management of the Project (the “Plan”). Subject to the prior review and written approval of Owner, the Plan shall be updated and revised from time to time to reflect changes in conditions and actual Project operation. Notwithstanding the foregoing, not later than November 1 of each year during the Term, Manager shall deliver to Owner a proposed plan for the immediately following year with the intention of the parties approving such plan prior to December 30 of the year in which such proposed plan is presented, in which event such proposed plan shall become the Plan for the purposes of this Agreement. In the event the proposed plan has not been approved by December 30, then commencing on January 1 and continuing until such proposed plan is approved, Manager shall operate on the Plan approved for the then expiring year with an automatic increase in each expense line item included in such Plan equal to the percentage increase in the Consumer Price Index (as hereinafter defined) for the year preceding the year for which the plan is being proposed.

Any significant expenditure (defined herein as those costing more than $5,000.00) not specifically set forth in the Plan shall require Owner’s prior written approval, except as provided in Section 4.2 hereof. Owner agrees that the Plan is a budgeting tool only and does not constitute a guarantee of actual operating performance. The Plan shall include, at a minimum, the following:

A. Minimum Leasing Guidelines. established jointly by Owner and Manager, setting forth target rental rates and premiums for each unit type and amenity package, together with maximum leasing incentive allowances for promotional purposes. Manager shall not execute any lease (or any renewal or extension thereof) on terms which materially vary from the minimum leasing guidelines without Owner’s prior written approval.

### B. Intentionally Omitted.

### As used in this Section 1.5, the “Consumer Price Index” shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers for the Washington Baltimore, D.C. MD VA WV CMSA (All Items, November, 1996 = 100), issued by the Bureau of Labor Statistics of the United State Department of Labor. If the Consumer Price Index is changed so that a base year other than 1996 is used, the Consumer Price Index used herein shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. If the Consumer Price Index is discontinued, with no successor or comparable successor Consumer Price Index, the parties shall select and substitute another similar index.

**SECTION 2**

**BANK ACCOUNTS**

2.1 BANK ACCOUNTS: Manager is authorized to establish one or more operating trust accounts and security deposit trust accounts for the Project. Operating trust accounts are hereinafter referred to as “operating accounts”. All other accounts are hereinafter referred to as “trust accounts”. Manager shall deposit into the trust accounts all security and other deposits made by tenants, unless directed otherwise by Owner. All other funds shall be placed in one operating account. All trust accounts shall be operated in conformance with state law. Manager shall designate one or more employees of Manager who shall be authorized to draw upon such accounts. In addition, Manager shall authorize certain representatives designated by Owner to have access to and authority to draw upon such accounts. No amounts deposited in any accounts established under this Agreement shall in any event be commingled with any other funds of Manager or any other funds received or collected by Manager in connection with its management or operation of any other property. All bank accounts shall be established at such banks or other institutions whose deposits are insured by the federal government as are designated by Owner. Manager shall not be liable to Owner in the event of bankruptcy or failure of a depository institution.

2.2 INITIAL DEPOSIT TO TRUST ACCOUNTS: Owner will deposit funds in the operating accounts and trust accounts in such amounts as Owner and Manager may deem appropriate. If state law allows, and Owner elects to not fully fund tenant trust accounts, Owner agrees to indemnify and hold Manager harmless from any claims that may result from such an election and agrees to sign a security deposit waiver addendum, if required by state law.

2.3 INITIAL DEPOSIT FOR RESERVES: On or before the Commencement Date, Owner shall remit to Manager a sum to be deposited in the operating account as an initial deposit as specified in the Plan. Owner agrees to maintain such contingency reserve at all times in the operating account so as to enable Manager to pay the obligations of Owner under this Agreement as they become due. Owner and Manager shall review the amount of the contingency reserve from time to time and shall agree in writing upon a new contingency reserve when such is required.

2.4 MANAGER’S OBLIGATION TO ADVANCE PAYMENTS: All purchases and other obligations incurred in connection with the operation of the Project shall be the sole cost and expense of Owner. All such purchases shall be made by Manager solely on behalf of Owner and not as a principal. Manager shall be under no duty to utilize or apply Manager’s own funds for the payment of any such debt or obligation. Manager shall not be obligated to make any advance to or for the operating account, nor shall Manager be obligated to incur any liability or obligation for the account of Owner without assurance that necessary funds for the discharge thereof have been provided. However, in the event that there are insufficient funds in the operating account, Manager may, after notifying Owner, advance its own funds for such purpose, in which event Owner shall promptly repay to Manager all such sums expended, together with interest at the rate of six percent (6%) per annum calculated from the date of Manager’s advancement of funds to the date of repayment from Owner. Provided that it has sufficient funds on hand to do so, Manager shall obtain for Owner the benefit of any available discounts for prompt payment.

2.5 INTEREST ON TRUST ACCOUNTS: Where permitted by law, Manager shall deposit trust funds into interest-bearing accounts. All interest earned on such funds shall belong to Owner, except where state law requires interest earned on security deposits to be paid to a tenant and shall not be considered part of “gross receipts” of the property as hereinafter defined.

**SECTION 3**

**COLLECTION OF RENTS AND OTHER RECEIPTS**

3.1 AUTHORITY OF MANAGER: Manager shall collect (and give receipts for, if necessary) all rents, charges and other amounts received in connection with the management and operation of the Project. All security deposits (excluding non-reimbursable cleaning fees, application fees and the like) shall be deposited into the trust account described in Section 2.1 above. All other receipts shall be deposited into the operating account. Under no circumstances shall Manager be liable to Owner for any uncollected rents, other income or bad debt resulting from operations, unless due to the negligence, willful misconduct or intentional acts of Manager.

3.2 SPECIAL CHARGES AND ANCILLARY INCOME: Manager shall deposit into the operating account charges paid by tenants for the late payment of rent, returned or non-negotiable checks, reimbursement of legal fees and other similar payments, as well as all other ancillary income related to the Project.

**SECTION 4**

**DISBURSEMENT FROM OPERATING ACCOUNTS**

4.1 OPERATING EXPENSES: From the operating account, Manager is authorized to pay or to reimburse Manager for all expenses and costs of operating the Project set forth in the Plan and for all other sums due Manager under this Agreement, including Manager’s compensation which is described and set forth in Section 15 hereof, in accordance with the Plan. Manager has sole responsibility for the timely payment of all authorized expenses of the Project; provided, however, that if Owner fails to furnish sufficient funds to make such payments, Owner shall be responsible for any resulting late fees and penalties. Upon 10 days notice by Manager to Owner that Manager has used its own funds to pay authorized Project expenses, Owner shall reimburse Manager, including interest at the annual rate of six percent (6%).

4.2 EXTRAORDINARY EXPENSES: Unless specifically provided for in the Plan, no single expenditure in excess of $10,000.00 shall be allowable without prior written approval of Owner. Unless Owner approves a contract in writing in advance, Manager shall not enter into any contract for goods or services for the Project which is not on market terms or for a term of more than twelve (12) months (unless such contract is terminable without penalty upon no more than thirty (30) days’ notice). Manager shall provide to Owner at least three (3) written bids for any expenditure over $10,000.00. However, in the event of an emergency, Owner authorizes Manager to pay any reasonable expenditure which is necessary or required because of danger to life or property, or which is immediately necessary for the preservation and safety of the Project or the safety of the tenants and occupants thereof, or if required to avoid the suspension of any necessary service to the Project, or to comply with any applicable federal, state, or local laws, regulations, or ordinances. Manager shall, however, as soon as reasonably possible, notify Owner in detail, concerning such expenditures.

4.3 AUTHORITY OF OWNER FOR MANAGER TO PAY CERTAIN EXPENSES: Manager shall pay from the Project operating account, in accordance with the Plan or as otherwise directed in writing by Owner, all utility and maintenance charges; all real property taxes and assessments; all premiums for liability and casualty insurance; all monthly payments upon underlying secured real property debt; Manager’s fees in accordance with the Plan or otherwise approved in writing by Owner; all other operating and rental expenses set forth herein or in the Plan; postage, copying, long distance charges and other expenses that are directly associated with the Project (whether incurred on-site or otherwise); the costs and expense of uniforms for employees (where applicable) and the costs and expenses directly associated with the training of Project employees.

4.4 EXPENSES TO BE PAID DIRECTLY BY OWNER: Owner shall directly pay costs not associated with Project operations, but which pertain to ownership and oversight activities for the Project.

4.5 FEES FOR LEGAL ADVICE: Owner shall pay reasonable expenses in accordance with the Plan which are incurred by Manager in the defense of vendor suits or other claims made against the Project or Manager relating to its activities as agent for Owner, or activities related to the operation of the Project. Manager shall immediately notify the Owner if legal services are anticipated to exceed the amounts set forth in the Plan. If any expenditure for legal services also benefits others for whom Manager acts as a property manager, Owner’s obligation shall be limited to Owner’s pro rata portion of such expense for legal services. Notwithstanding the foregoing, nothing contained in this section shall obligate Owner to pay Manager’s legal fees in the event Manager is alleged to have committed negligence, or engaged in fraud, misconduct, or intentional acts or omissions relating to the allegations of the dispute.

4.6 NET PROCEEDS: To the extent that funds are available, and after maintaining a cash contingency reserve amount as specified in Section 2.3, Manager shall transmit net cash proceeds to Owner at least monthly at a time specified by Owner.

4.7 PRIORITY OF PAYMENT: Should collected funds (excluding security deposits deposited into trust accounts) be insufficient to satisfy the current debts and obligations of the Project, such debts and obligations shall be paid in accordance with any loan agreement or other agreement between Owner and any lender secured by a mortgage secured by the Project, or, in the event there is no such lender, in the following order: Project payroll, including all related administrative charges and expenses; underlying secured real property debt; other required payments, including payments to reserve accounts management fees and related expenses due Manager; charges by utility companies (including, but not limited to, gas electric, water, sewer, garbage and cable television); other Project expenses. Where the terms of any loan document relating to the Project conflicts with the terms of this section, the terms of such loan document shall control, provided the Owner has notified Manager of the requirements of such loan document.

**SECTION 5**

**FINANCIAL AND OTHER REPORTS**

5.1 REPORTS: By the 15th day of each month, Manager shall furnish to Owner (or Owner’s Representative) a statement of receipts and disbursements from the operation of the Project during the prior calendar or fiscal month. Such reports are prepared solely for the benefit of Owner and any lenders for the Project. In addition, Manager shall, on a mutually acceptable schedule and at Owner’s request, prepare and submit to Owner such other reports as Owner shall specify, including, but not limited to the following:

a.) Weekly occupancy, leasing status and traffic reports.

b.) Weekly market comparable rent survey.

1. Monthly bank reconciliations.
2. Reports required by Section 5.1.
3. Such other reports as Owner may require from time to time.

The reports required to be provided by Manager pursuant to this Section 5.1 shall be in a form and of a substance reasonably acceptable to Owner and as otherwise may be required by any lender of the Project, and, if required by Owner, prepared in accordance with generally accepted accounting principles.

5.2 OWNER’S RIGHT TO AUDIT: Owner and any lender to Owner or the Project shall have the right to audit applicable accounts managed by Manager and books and records maintained by Manager and the cost of such audits shall be paid by Owner, as an expense of the Project; provided, however, that in the event that such audit reveals an overstatement or understatement of income from the Project for the period measured in excess of five (5%) percent, then the reasonable cost of such audit shall be borne by Manager. Such audits may be made during normal business hours posted at the property or at other reasonable times and locations within the District of Columbia Metropolitan Area upon reasonable advance notice by Owner. Owner shall indemnify and hold harmless Manager from any liability to third-parties resulting from the distribution by Owner of any financial information provided to Owner regarding the Project under this Agreement.

**SECTION 6**

**ADVERTISING**

6.1 ADVERTISING: Manager is authorized to advertise the Project and vacant units within the Project for rent and employment in accordance with the advertising budget set forth in the Plan, which advertising may include using periodicals, signs, plans, brochures or displays, internet advertisings and postings or such other means as Manager may reasonably deem proper and advisable. Manager is authorized to place signs on the Project advertising that units are available for rent, provided such signs comply with applicable laws and are otherwise subject to the review and written approval of Owner. The cost of such advertising shall be paid out of the operating account, in accordance with the advertising budget set forth in the Plan or as otherwise approved in writing by Owner. All advertising shall make clear that Manager is the manager and is not the owner of the Project. Subject to Owner’s prior written approval, Manager may publish advertisements that share space with other properties managed by Manager, provided that the costs of such advertising shall be prorated among the various projects. Manager shall collaborate with Owner on the design of all marketing materials to promote consistency and continuity with respect to the marketing of the Project, and all such advertising shall be subject to the prior written approval of Owner.

**SECTION 7**

**LEASING AND RENTING**

7.1 MANAGER’S AUTHORITY TO LEASE PROJECT: Manager shall use best efforts to keep the Project rented by procuring tenants for the Project. Manager is authorized to negotiate, prepare and execute all rental agreements, including all renewals and extensions of rental agreements, and to cancel and modify existing rental agreements subject to the Plan. Manager shall execute all rental agreements as agent for the Owner. All costs of leasing shall be paid out of the operating account, in accordance with the leasing budget as set forth in the Plan or as approved in writing by Owner. No rental agreement shall be for a period in excess of one (1) year nor less than a period of \_\_\_\_\_\_\_\_\_\_\_\_ (\_\_) months without the approval of Owner. The form of the rental agreement shall be approved by Owner, and shall be acceptable to the lender or lenders for the Project.

7.2 NO OTHER RENTAL AGENT: During the term of this Agreement, Owner shall not authorize any other person, firm or corporation to negotiate or act as leasing or rental agent with respect to any leases for residential space in the Project. Owner agrees to promptly forward all inquiries about residential leases or rental agreements to Manager. Notwithstanding anything contained herein to the contrary, Manager acknowledges that Owner has retained Miller Walker in connection with the leasing of the vacant commercial space comprising a portion of the Project and has retained, or may retain, Commercial Real Estate Advisors in connection with the management of the commercial space comprising a portion of the Project and the parking facilities comprising a portion of the Project. Manager shall coordinate, collaborate and cooperate as reasonably directed by Owner with such parties for the commercial and parking facilities portions of the Project.

7.3 RENTAL RATES: In accordance with the provisions of the Plan or as otherwise directed by Owner, Manager, with Owner’s written approval, may establish and set or revise all rents, fees or other deposits, and all other charges chargeable with respect to the Project. Manager shall be authorized to promote the occupancy of the Project by granting rental concessions and other promotional bonuses to prospective and current tenants which are consistent with concessions being offered for similar apartment buildings in the West End submarket of the District of Columbia, after first consulting with, and obtaining the written approval of, Owner as to the nature, quantity and duration of such rental concessions and promotional bonuses, which shall in all cases be consistent with the Plan.

7.4 ENFORCEMENT OF RENTAL AGREEMENTS: Manager is authorized to institute and defend, in Owner’s name or in the name of Manager, all legal actions or proceedings for the enforcement of any rental term, for the collection of rent or other income due to the Project, or for the eviction or dispossession of tenants or other persons from the Project and matters relating thereto. Manager is authorized to sign and serve such notices as Manager and Owner deem necessary for the enforcement of rental agreements, including the collection of rent and other income. Manager may settle, compromise and release such legal actions or suits or to reinstate such tenancies without the prior consent of Owner, if such settlement, compromise, or release shall involve an amount in controversy of One Thousand Dollars ($1,000), or less for any single action or Ten Thousand Dollars ($10,000) or less in the aggregate for any twelve (12) month period. Where the amount in controversy is in excess of One Thousand Dollars ($1,000), or Ten Thousand Dollars ($10,000) in the aggregate for any twelve (12) month period, Manager shall first obtain the written authorization of Owner before entering into any compromise, settlement, or release of such legal action. Any moneys for such settlements paid out by Manager shall be an operating expense of the Project and set forth in the Plan. Reasonable attorney’s fees, filing fees, court costs and other necessary expenditures incurred in the connection with such action shall be paid out of the Project operating account or shall be reimbursed directly to Manager by Owner, provided, however, that if the reasonably anticipated costs of attorneys’ fees to be incurred by Manager in connection with any single action are in excess of $1,000, Manager shall obtain Owner’s approval before instituting such legal action. All funds recovered by tenants shall be deposited into the Project operating account. Manager shall use the attorney or attorneys approved in writing by Owner to handle any and all such litigation, provided, however, that the following law firms are hereby approved by Owner: \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_. Owner shall be responsible for all claims, damages and legal expenses relating to the lease or other housing statutes, whether brought against the Owner or Manager as the Agent of Owner, unless due to the negligence, misconduct or intentional acts of Manager.

**SECTION 8**

**PROJECT EMPLOYEES**

8.1 MANAGER’S AUTHORITY TO HIRE: Manager is authorized to hire, supervise, discharge and pay all employees, contractors or other personnel necessary to be employed in the management, maintenance and operation at the Project so long as all payroll and related expenditures for such personnel are within the Plan guidelines. All employees performing services directly for the Project (excluding off-site regional property managers, asset managers, executives and off-site engineers and maintenance staff) shall be deemed to be employees of Manager for the Project. Manager is an equal opportunity employer. When requested by Owner, Manager shall consult with Owner in decisions relating to the hiring, promotion and termination of Project employees.

8.2 OWNER TO REIMBURSE EMPLOYEE EXPENSES: All wages and payroll related expenses (which includes fringe benefits, and all other forms of compensation payable to, or for the benefit of, employees of the Project ((but not to property managers not employed directly at the Project)) and all local, state and federal taxes and assessments (including, but not limited to, payments to and administration of fringe benefits, employee benefits insurance program, worker’s compensation, Social Security taxes and Unemployment Insurance) incident to the employment of all such personnel and their direct training), and employer health insurance contributions shall be treated as an operating expense of the Project and shall be paid by Manager from Owner’s funds, from the Project operating account subject to the Plan. However, nothing contained herein shall be construed as creating any direct obligation by the Owner to any employee of Manager for such items, which obligation is expressly disclaimed by Owner and remains the sole responsibility of Manager. In addition, Manager shall accrue for all vacation pay due site employees. To the extent caused by Owner’s gross negligence or willful misconduct, such payments shall also include all awards of back pay and overtime compensation that may be awarded to any project employee in any legal proceeding, or in settlement of any action or claim that has been asserted by any such employee. Owner shall pre-pay Project payroll thirty days in advance and authorizes Manager to maintain a credit for thirty days of estimated Project payroll for the term of this Agreement.

8.3 MANAGER’S AUTHORITY TO FILE RETURNS: Manager shall do and perform all acts required of an employer with respect to the Project and shall execute and file all payroll tax and other payroll returns required under the applicable federal, state and local laws, regulations and/or ordinances governing employment, and all other statements and reports pertaining to labor employed in connection with the Project and under any similar federal or state law now or hereafter in force. The costs for preparing any such filings shall be a Project expense.

8.4 WORKER’S COMPENSATION INSURANCE/TAXES: Manager shall, at Owner’s expense, maintain and administer a worker’s compensation insurance program covering all liability of Manager and the Project under established worker’s compensation laws and all other Federal and State labor laws, whether such laws provide that such insurance shall be obtained from a third party carrier or from a state fund and whether such payments shall be denominated as insurance premiums or taxes. Manager waives all rights of subrogation against Owner with respect to any and all employee claims for worker’s compensation.

8.5 INTENTIONALLY OMITTED.

**SECTION 9**

**OPERATIONS, MAINTENANCE AND REPAIR**

9.1 PERFORMANCE OF REPAIRS: Manager is authorized to make or cause to be made, through its employees at the Project, Manager’s other employees, or through contracted services, all ordinary repairs and replacements reasonably necessary to preserve the Project in its present condition and for the operating efficiency of the Project, and all alterations required to comply with rental agreement requirements, government regulations or insurance requirements, all at Owner’s cost and expense, subject to the limits set forth in the Plan. To the extent that the cost of the services specified in the preceding sentence exceed the dollar limitations set forth in Section 4.2, then such expenses shall be deemed “extraordinary” and subject to the limitations and requirements set forth in Section 4.2. In accordance with the Plan or as otherwise directed in writing by Owner, Manager is also authorized to decorate the Project and the individual apartment units and to purchase or rent, on Owner’s behalf, all equipment, tools, appliances, materials, supplies, uniforms and other items reasonably necessary for the management, maintenance or operation of the Project. Such maintenance and decorating expenses incurred in accordance with the Plan shall be paid out of the operating accounts.

9.2 FEES FOR WORK PERFORMED BY MANAGER’S EMPLOYEES: With Owner’s prior written approval, Manager may cause repairs and replacement work to be performed by employees for Manager who are not otherwise direct employees of the Project. Owner shall pay to Manager a reasonable fee for such services based upon the then current hourly charges made and assessed by Manager for the performance of such services. Such charges shall be equal to Manager’s direct and indirect expenses associated with the employment of such person. Such charges shall be reasonable, shall not exceed the amounts set forth in the Plan and shall not be more than charges made by qualified independent contractors performing similar work, under similar circumstances, in the same geographical area as the Project.

9.3 CONTRACTS, UTILITIES AND SERVICES: Subject to the requirements of Section 4.2, Manager is authorized to negotiate contracts for non-recurring items of expense, not to exceed $5,000.00. Manager shall enter into agreements for all necessary repairs, maintenance, minor alterations, and utility services, and make contracts on Owner’s behalf for electricity, gas, telephone, fuel, water and such other services required for the operation of the Project, in accordance with the Plan. All utility deposits shall be the Owner’s responsibility, except that Manager may pay the same from the operating accounts if set forth in the Plan or otherwise directed by Owner to do so in writing.

9.4 LIMITATIONS ON CONTRACTS: Each such contract or agreement shall: (a) be in the name of the Project, (b) be assignable, at Owner’s option, to Owner or Owner’s nominee, (c) include a provision of cancellation thereof by Owner or Manager upon not more than thirty (30) days written notice (unless otherwise consented to by Owner), (d) shall require that all contractors provide evidence of sufficient insurance and (d) include a clause that such contract shall be subordinate to the lien of any deed(s) of trust encumbering the Project and that such contracting party shall agree to the assignment of such contract to such lender(s). If this Agreement is terminated pursuant to Section 18, Manager shall, at Owner’s option, assign to Owner or Owner’s nominee all contracts and agreements pertaining to the Project. Manager shall disclose to Owner any affiliation between Manager and any proposed contractor prior to entering into such contract and shall fully and completely disclose any economic benefit, referral fee, revenue sharing arrangement or other economic benefit Manager may receive as a result of such contract or agreement.

**SECTION 10**

**RELATIONSHIP OF MANAGER TO OWNER**

10.1 Manager is engaged independently in the business of property management and acts hereunder as an independent contractor. Nothing contained in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement, or as requiring Manager to bear any portion of losses, or share in any of the profits, arising out of or connected with the ownership or operation of the Project. Manager shall not, at any time during the term of this Agreement, be considered to be a direct or indirect employee of Owner. In performing its services hereunder, Manager shall use the same level and skill and care as is used by other reputable, experienced third party property managers who manage similar properties in the West End submarket of the District of Columbia. Except as expressly provided in this Agreement, Owner agrees to assume all financial risks of operating the Project, including any claims made against Manager while acting as Owner’s Agent within the scope of its authority as provided herein, except to the extent that such claims result from the negligence or misconduct or willful acts or omissions of Manager, in which case such claims shall be the sole responsibility of Manager. Owner agrees to hold Manager harmless for any and all claims arising prior to Manager’s management of the Project. Except as provided herein, neither party shall have the power to bind or obligate the other party. Except as specifically set forth in this Agreement, Manager shall not act as the agent of Owner; and, except as provided in this Agreement, Owner shall not act as the principal of Manager.

# SECTION 11

**INSURANCE AND INDEMNIFICATION**

11.1 GENERAL INSURANCE PROVISIONS.

(a) It is the intention of the parties hereto for Owner to provide primary liability insurance coverage for both Owner and Manager as it pertains to the management of the Project.  Thus, Manager is (i) to be included as an insured under Owner’s general liability insurance covering liability associated with the Project, and (ii) to receive a waiver of all insurers’ rights of subrogation against Manager under all insurance policies of Owner required by this Agreement.  Manager’s own liability insurance is intended to cover Manager for claims against Manager not covered by such insurance of Owner and shall waive Manager’s insurer’s rights of subrogation against Owner.

(b) All insurance policies required of either party under this Agreement shall (i) be issued by companies authorized to do business in the state in which the Project is located, and which shall have an A.M. Best rating of A-, VII, or better, and (ii) require at least thirty (30) days’ notice to the other party of cancellation of coverage (and ten (10) days’ notice for non-payment of premiums).

11.2 OWNER’S INSURANCE.  Owner shall maintain or cause to be maintained, at its expense and at all times during the term of this Agreement, the following insurance which may be maintained pursuant to Owner’s portfolio insurance:

(a) “Special Cause of Loss Form” (f/k/a “All Risk”) property damage insurance that provides replacement cost valuation coverage for all risks covered by such property insurance, including builder’s risk if applicable, with policy limits of at least one hundred percent (100%) of the full replacement cost of the buildings, improvements and personal property of Owner from time to time located in the Project.  Any deductible in such policy shall not exceed Fifty Thousand Dollars ($50,000).

(b) Commercial General Liability Insurance (CGL) and Umbrella Liability Insurance, written on an occurrence basis, including contractual liability coverage, with limits per location of not less than Ten Million Dollars ($10,000,000) combined for bodily injury and property damage liability.  Under these policies, Manager will be an insured while acting as Owner’s real estate manager, and Owner’s policy will be primary and Owner’s insurer will not seek contribution from insurance afforded under the policies described in Section 11.3 below while Manager is acting within the scope of its duties as real estate manager.  Should any self insured retention (“SIR”) or deductible be incorporated within the policy of insurance, the responsibility to fund such financial obligations shall rest entirely with Owner and such SIR/deductible shall be deemed covered in accordance with the CGL form required; provided, however, in no event shall such SIR or deductible exceed Fifty Thousand Dollars ($50,000).

(C) Certificates evidencing the renewal or replacement of all policies of insurance to be procured by Owner pursuant to this section shall be delivered by Owner to Manager promptly following the renewal of each respective policy term.  A copy of such policies shall be provided to Manager upon request.  The failure by Owner to obtain or maintain any insurance meeting the requirements of this section, or to deliver to Manager within ten (10) business days of Manager’s request the policies or certificates required by this section, shall be an occurrence of default under this Agreement.

11.3 MANAGER’S INSURANCE.  Manager shall maintain, at its expense (with the exception that the cost of Workers’ Compensation Insurance for employees located at the Project, which is reimbursable as a Project expense) and at all times during the term of this Agreement, the following insurance, in form and content reasonably acceptable to Owner, which may be maintained pursuant to Manager’s portfolio insurance:

(a) CGL Insurance and Umbrella Liability Insurance, written on an occurrence basis, including contractual liability coverage, with limits of not less than Ten Million Dollars ($10,000,000) combined for bodily injury and property damage liability, with a completed operations endorsement.  These policies will not contribute with insurance for defense or indemnity provided by the policy described in Section 11.2(b) above.  Should any SIR or deductible be incorporated within the policy of insurance, the responsibility to fund such financial obligations shall rest entirely with Manager and such SIR/deductible shall be deemed covered in accordance with the CGL form required; provided, however, in no event shall such SIR or deductible exceed Fifty Thousand Dollars ($50,000).

(b) Automobile Liability Insurance, covering both owned and non-owned vehicles, with limits of not less than One Million Dollars ($1,000,000), combined single limit for bodily injury and property damage.

(c) Workers’ Compensation Insurance, as required by the jurisdiction in which the Project is located, covering all Manager’s employees and Employer’s Liability Insurance with limits of not less than One Million Dollars ($1,000,000) for bodily injury by accident and One Million Dollars ($1,000,000) for bodily injury by disease.

(d) Commercial Crime and/or Employee Dishonesty Insurance, covering the activities of all of its employees who may handle or be responsible for monies or other property of Owner, with limits of not less than Two Million Dollars ($2,000,000).

(e) Professional Liability or Errors and Omissions Insurance with an annual limit of not less than Two Million Dollars ($2,000,000) per occurrence and in the aggregate.

Certificates evidencing the renewal or replacement of all policies of insurance to be procured by Manager pursuant to this section shall be delivered by Manager to Owner promptly following the renewal of each respective policy term.  The failure by Manager to obtain or maintain any insurance meeting the requirements of this section, or to deliver to Owner within ten (10) business days of Owner’s request the certificates required by this section, shall be an occurrence of default under this Agreement.

11.4 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, directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, 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 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, directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, 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.

11.5 MANAGER’S INDEMNITY.  Subject to Section 11.4 hereof, to the extent not covered by Owner’s insurance required hereunder, Manager shall indemnify, defend, protect and hold harmless Owner, and its officers, directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, successors and assigns, from and against all claims, losses and liabilities (including all expenses and reasonable attorneys’ fees) which arise out of the gross negligence, willful misconduct, fraud or criminal conduct of Manager.  With respect to claims (i) covered by the foregoing indemnity by Manager, but (ii) not covered by Manager’s general liability insurance, Manager shall defend Owner through counsel of Manager’s choice (which counsel shall be subject to Owner’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed).

11.6 OWNER’S INDEMNITY.  Subject to Section 11.4 hereof, to the extent not covered by Owner’s or Manager’s insurance required hereunder, Owner shall indemnify, defend, protect and hold harmless Manager, and its officers, directors, shareholders, partners, members, employees, subsidiaries, agents, affiliates, contractors, lenders, trustees, beneficiaries, licensees, successors and assigns, from and against all claims, losses and liabilities (including all expenses and reasonable attorneys’ fees) which arise out of or in connection with this Agreement or out of any activity on, or the condition of, the Project, unless the claim, loss or liability arises from the gross negligence, willful misconduct, fraud or criminal acts of Manager.  With respect to claims (i) covered by the foregoing indemnity by Owner, but (ii) not covered by Owner’s general liability insurance, Owner shall defend Manager through counsel of Owner’s choice (which counsel shall be subject to Manager’s prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed).  Manager shall reimburse Owner for all such reasonable costs of defense to the extent that it is determined by a final judgment of a court of competent jurisdiction that Manager’s liability was caused by the gross negligence, willful misconduct, fraud or criminal acts of Manager.  If Manager provides its own defense against any allegation of gross negligence, willful misconduct, fraud or criminal acts, and to the extent that a final judgment of a court of competent jurisdiction determines that Manager was not grossly negligent or engaged in willful misconduct, fraud or criminal acts, Owner shall reimburse Manager for its costs of defense in accordance with the provisions of this Agreement.

11.7 SURVIVAL.  All indemnities contained in this Agreement shall survive the expiration or termination of this Agreement.

11.8 INCLUSION OF MANAGER’S SUBSIDIARY.  The parties agree that, if Manager decides to place Project employees on the payroll of a subsidiary of Manager (provided such employees are performing Manager’s duties hereunder), the term “Manager” as used in this section shall also apply to such subsidiary.

11.9 CLAIMS HANDLING.  Manager shall notify Owner immediately after Manager becomes aware of any accidents or claims relating to the operation and maintenance of the Project or any damage or destruction to the Project.  Manager shall thereafter promptly investigate and shall report in detail to Owner regarding the estimated costs of repair and shall prepare for approval by Owner all reports required by an insurance company in connection with any such accident, claim, damage or destruction.  Manager is not authorized to settle any claim against any party without the prior written consent of Owner.

11.10 CONTRACTOR’S INSURANCE.  Manager shall require that all contractors who enter the Project have insurance coverage, at the contractor’s expense, in accordance with Exhibit A.  Each contractor shall provide evidence of such insurance prior to performing any work.  All such insurance shall be primary and noncontributory.  Manager shall obtain and keep on file a certificate of insurance for each contractor which shows that such contractor is insured in accordance with Exhibit A.

**SECTION 12**

**PREVIOUS ACTIONS**

12.1 Manager assumes no liability whatsoever for any acts or omissions of Owner or any previous owners of the Project, or any previous property managers or other agents of Owner, and Owner assumes no liability for any acts or omissions of Manager except to the extent expressly stated in this Agreement. Manager assumes no liability for any failure of or default by any tenant in the payment of any rent or other charges due Owner or in the performance of any obligations owed by any tenant to Owner pursuant to any rental agreement or otherwise, unless caused by the negligence, breach of this Agreement or misconduct or intentional acts or omissions of Manager. Manager does not assume any liability for previously unknown violations of environmental or other laws or regulations which may become known during the period this Agreement is in effect. Any environmental violations or hazards discovered by Manager shall be brought to the attention of Owner in writing immediately upon their discovery and Owner shall be solely responsible for such violations, hazards or claims arising from such conditions, except if such violation or hazard arises as a result of the actions or omissions of Manager. Further, Manager assumes no liability for the financial performance of the Project.

**SECTION 13**

**ASSIGNMENT OF RIGHTS AND OBLIGATIONS**

13.1 ASSIGNMENT: Neither Manager nor Owner shall assign its rights or interest in this Agreement to a third party, without the express, written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Owner may assign this Agreement without Manager’s consent to (a) any future owner of the Project or (b) any lender or lenders providing financing for the Project, and Manager further agrees to execute any such commercially reasonable assignment to a lender if required by such lender.

**SECTION 14**

**MANAGER’S COMPENSATION AND EXPENSES**

14.1 COMPENSATION: As compensation for the services provided by Manager under this Agreement (and exclusive of reimbursement of expense to which Manager is entitled hereunder), Owner shall pay Manager the following compensation:

A. FOR MANAGEMENT SERVICES: Owner shall pay to Manager, and Manager agrees to accept a property management fee (“Manager Property Management Fee”) equal to the following: (a) for the first three (3) months of the Term, Five Thousand Five Hundred Dollars ($5,500.00) per month, and (b) thereafter, an amount equal to the greater of (i) two percent (2.0)%) of Gross Revenues from the Project per month, or (ii) Eleven Thousand Dollars ($11,000.00) per month.In addition, to the foregoing, the Manager Property Management Fee shall include a payment to Manager by Owner of One Thousand Three Hundred Seventy-Five Dollars ($1,375.00) per month for the fourth (4th) through fifteenth (15th) months of the Term. “Gross Revenues” shall be all receipts collected by Owner from the operations of the residential portion of the Project, including rental receipts, rent supplement receipts, receipts from vending and other coin operated machines, interest received on the amounts deposited in the security deposits account (to the extent permitted by law to be retained by Owner), sale of key replacements, notary fees, copies for residents, bad check fees, and reimbursements by residential tenants for common area expenses, operating expenses and taxes, but excluding (1) security deposits received from tenants until such deposits are applied for rental payments, (2) reimbursement by tenants for work done for that particular tenant, (3) proceeds from the sale or other disposition of all or any part of the Project, (4) insurance proceeds received by the Owner as a result of any insured loss (except proceeds from rent insurance), (5) condemnation proceeds, (6) capital contributions made by any partner of Owner, (7) proceeds from capital, financial and any other transaction not in the ordinary course of the operation of the Project and (8) any revenue from any non-residential components of the Project, including, without limitation, any retail, office, garage or parking component of the Project. The Manager will be compensated for its service by monthly fees outlined above paid in arrears on the 1st day of each month.

B. FOR OTHER SERVICES: Services for due diligence on sale, refinance or other disposition are included in Manager’s obligations hereunder, and Manager is not entitled to any additional fee therefor.

14.2 ACTS OF GOD: In the event of a casualty loss due to Acts of God and/or other casualty such as, without limitation, hurricanes, tornadoes, earthquakes, fires or floods, where the Project lender allows restoration of damage to the Project, if Owner engages Manager to oversee such restoration work, such engagement will be in accordance with a separate written agreement negotiated by the parties.

14.3 CONSTRUCTION MANAGEMENT SERVICES: If Owner engages Manager to oversee capital improvements at the Project over and above routine maintenance, such improvements shall be performed pursuant to a separate written agreement executed by Owner and Manager.

14.4 FOR OTHER ITEMS OF MUTUAL AGREEMENT: Should Owner wish Manager to perform services which are not otherwise governed by the terms and provisions of this Agreement, the parties shall meet to discuss and to agree upon in writing executed by Owner and Manager the additional compensation to be paid by Owner to Manager for such additional services.

14.5 INTEREST ON UNPAID SUMS: Any sums due Manager under any provision of this Agreement, and not paid within thirty (30) days after such sums have become due, shall bear interest at the rate of six percent (6%) per annum from and after the expiration of such thirty (30) day period.

**SECTION 15**

**STRUCTURAL CHANGES**

Owner expressly withholds from Manager any power or authority to make any structural changes in the Project, or to make any other major alterations or additions in or to the Project or to any equipment in the Project, or to incur any expense chargeable to Owner other than expenses related to exercising the express powers vested in Manager through this Agreement and set forth in the Plan, without the prior written consent of Owner. However, such emergency repairs as may be required because of danger to life or property, or which are immediately necessary for the preservation and safety of the Project or the safety of the tenants and occupants thereof, or required to avoid the suspension of any necessary service to the Project, or to comply with any applicable federal state or local laws, regulations or ordinances, shall be authorized pursuant to section 4.2 of this Agreement, and Manager shall notify Owner of such repair as soon as practicable.

**SECTION 16**

**BUILDING COMPLIANCE**

Except to the extent that Manager has expressly assumed responsibility for the maintenance, repair, or operations of the Project under this Agreement, or under any separate agreement with Owner, Manager does not assume and is given no responsibility for compliance of the Project or any building thereon or any equipment therein with the requirements of any building codes or with any statute, ordinance, law or regulation of any governmental body or of any public authority or official thereof having jurisdiction, except to notify Owner promptly or forward to Owner promptly any complaints, warnings, notices or summons received by Manager relating to such matters. If required by law, Owner authorizes Manager to disclose the ownership of the Project to any such officials.

**SECTION 17**

**TERMINATION**

17.1 TERMINATION BY EITHER PARTY: This Agreement may be terminated by Manager, without cause, by giving not less than thirty (30) days advanced written notice to the Owner. This Agreement may be terminated by Owner without cause, by giving not less than thirty (30) days advanced written notice to Manager.

17.2 TERMINATION FOR CAUSE: In addition to the provisions of Section 18.1, this Agreement shall terminate in any event, and all obligations of the parties hereunder shall cease (except as to liabilities or obligations which have accrued or arisen prior to such termination, or which accrue pursuant to Section 18.3 as a result of such termination, and obligations to indemnify), upon the occurrence of any of the following events:

A. Breach of Agreement: Ten (10) days after the receipt of notice by either party to the other specifying in detail a material breach of this Agreement, if such breach has not been cured within said ten (10) day period; or if such breach is of a nature that it cannot be cured within said ten (10) day period but can be cured within a reasonable time thereafter, but in no event more than 45 days following notice, if efforts to cure such breach has not commenced and/or such efforts are not proceeding and being continued diligently both during and after such ten (10) day period prior to the breach being cured. However, the breach of any obligation of either party hereunder to pay any moneys to the other party under the terms of this Agreement shall be deemed to be curable within ten (10) days.

B. Excessive Damage: Upon the destruction of or substantial damage to the Project by any cause, or the taking of all or a substantial portion of the Project by eminent domain, in either case making it impossible or impracticable to continue operation of the Project.

C. Sale of Project: In the event of the sale of the Project, this Agreement shall terminate upon the giving of not less than thirty (30) days written notice by Owner to Manager.

D. Default: Each of the following events shall constitute an event of default by the party in respect of which such event occurs:

1. the failure of either party to pay any amounts required to be paid by it hereunder or to perform any of its obligations hereunder for a period of ten (10) days after the date on which notice of the failure has been given to the defaulting party by the other party;

2. the filing of a voluntary petition in bankruptcy or insolvency or a petition for reorganization under any bankruptcy or similar creditor relief law;

3. the consent to an involuntary petition in bankruptcy or the failure by such party to vacate or stay, within sixty (60) days from the date of entry thereof, any order approving an involuntary petition;

4. the entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating such party as bankrupt or involvement or approving a petition seeking reorganization or appointing a receiver, trustee, conservator or liquidator of all or a substantial part of such party’s assets, if such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) consecutive days;

5. the failure to fulfill any of the other covenants, undertakings, obligations or conditions set forth in this Agreement and the continuance of any such default for a period of ten (10) days after written notice of said failure;

6. theft, fraud, negligence, or other knowing, misconduct or intentional acts or omissions by Manager, its Affiliates, employees or agents; and

7. any material loss or damage to Owner attributable to Manager’s acts or omissions, and which result in compliance sanctions, loss of tax credits, or penalties or sanctions imposed against Owner by any governmental authority.

17.3 TERMINATION COMPENSATION: Any amounts accruing to Manager prior to such termination shall be due and payable upon termination of this Agreement. In addition, in the event Owner terminates this Agreement during the initial six (6) months of the Initial Term for any reason other than Manager’s default, Owner agrees to pay Manager the minimum management fee that would be due Manager under this Agreement for the unexpired portion of the initial six month period (i.e., $49,500 less the amount of the Manager Property Management Fee already paid to Manager as of the effective date of termination). Such sums shall be paid by Owner to Manager within thirty (30) days following the effective date of termination.

78.4 OWNER RESPONSIBLE FOR PAYMENTS: Upon termination of or withdrawal from this Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Manager under this Agreement for and on behalf of Owner, if such bill was incurred by Manager in accordance with the Plan or as otherwise approved by Owner. In addition, Owner shall indemnify Manager against any obligations or liabilities which Manager may have properly incurred on Owner’s behalf under this Agreement.

17.5 ACCOUNTS; UNPAID BILLS: Manager shall deliver to Owner, on or before the later of: (i) thirty (30) days (or sooner if required by law) after notice of termination of this Agreement is given, or (ii) the actual date of termination of this Agreement, any balance of moneys due Owner and tenant security deposits which were held by Manager with respect to the Project, as well as a final accounting reflecting the balance of income and expenses with respect to the Project, as of the date of termination or withdrawal, and all records, contracts, leases, receipts for deposits, and other papers or documents which pertain to the Project. Bills previously incurred but not yet invoiced shall be the responsibility of and sent directly to Owner and shall be paid by Owner on or before the date due, or as soon as practicable thereafter. In addition, Manager shall assign, transfer or convey to Owner all service contracts and personal property relating to or used in the operation and maintenance of the Project. Manager shall, at its cost and expense, remove all signs that it may have placed at the Project indicating that it is Manager of the Project and repair and restore any damage resulting therefrom. Manager shall also, at no additional charge to Owner, for a period of forty-five (45) days after such expiration or termination of this Agreement, make itself available to consult with and advise Owner, or such other person or persons designated by Owner, regarding the operation and maintenance of the Project.

17.6 FINAL ACCOUNTING: Since all records, contracts, leases, rental agreements, receipts for deposits, unpaid bills, and other papers and documents which pertain to the Project are deemed to be the property of the Owner, they are to be delivered to Owner, upon the effective date of such termination, after payment of all payroll and fees due Manager. Manager may retain temporary possession of such records as may be necessary in order to comply with the provisions of Section 18.5 and/or applicable law.

**SECTION 18**

**COMPLIANCE – LIHTC/SECTION 42**

Manager acknowledges and agrees that the Project is subject to certain covenants that restrict the rental of apartments at the Project to households meeting certain age and/or income requirements and which require collecting, retaining and reporting certain information. As such, Manager agrees to comply with all such requirements of which it is notified by Owner and acknowledges the Owner's objective in maintaining tax credits for residential rental properties. Manager represents and warrants that it is familiar with Section 42 of the IRS Code and requirements thereto, including all rules and regulations regarding qualification for tax credits and further agrees to operate this property in a manner which meets the appropriate Regulatory Agreements. Manager will cause the Project to be operated in a manner that complies with all other statutes, regulations, and agreements, which must be complied with in order to maintain the tax credits approved for this Project.

**SECTION 19**

**REPRESENTATIONS**

19.1 OWNER’S REPRESENTATIONS AND WARRANTIES: Owner represents and warrants as follows: (a) Owner has the full power and authority to enter into this Agreement, and the person executing this Agreement is authorized to do so; (b) all permits for the operation of the Project have been secured and are current; and (c) Owner is not aware of any violation of any building or construction statute, ordinance, or regulation that will affect the operation of the Project except as may have been previously disclosed to Manager.

90.2 MANAGER’S REPRESENTATIONS AND WARRANTIES: Manager represents and warrants as follows: (a) the officers of Manager executing this Agreement have the full power and authority to enter into this Agreement; (b) there are no written or oral agreements by Manager that will be breached by, or agreements in conflict with, Manager’s performance of each of its obligations under this Agreement; (c) where necessary, Manager is or otherwise will be duly licensed and able to perform all of the duties under this Agreement at the effective date of this Agreement and shall comply with and abide by all laws, rules, regulations, and ordinances pertaining thereto, including, without limitation, the requisite licenses to perform brokerage and property management activities in the District of Columbia; and (d) manager has sufficient resources, staff and experience to perform its obligations under this Agreement.

**SECTION 20**

**LENDER REQUIREMENTS; SUBORDINATION**

20.1 SUBORDINATION: Manager agrees to and does hereby subordinate any and all lien rights securing the right to be paid any amounts hereunder that it may have under this Agreement or by operation of law to all liens and rights of any lender and any and all documents executed and delivered in connection therewith.

20.2 NOTICES TO LENDER: Manager shall deliver to Owner’s lender(s) (provided the identity and contact information of Owner’s lender(s) are provided to Manager in writing) a copy of each and every notice of default which is given by Manager under the terms of this Agreement at the same time such notice is given to Owner. Manager shall accept cure of any default by Owner under this Agreement by such lender(s) provided such cure is within the time periods provided in this Agreement for cure by Owner.

20.3 TERMINATION BY LENDER: This Agreement shall be subject to termination by the lender(s) from and after the existence of any event of default under any mortgage or deed of trust encumbering the Project (a “Lender Default Notice”), and upon Manager’s receipt of such notice of termination, Manager shall have no further rights with respect to the management of the Project or obligation to perform under this Agreement (except for those obligations which by their express terms survive termination of this Agreement), and in no event shall Manager look to any lender, or its successors or assigns (including the purchaser at any foreclosure sale) for the payment of any fees or other amounts payable by Owner hereunder; provided, however, Manager shall be entitled to receive all fees due under this Agreement until such time as it is provided a Lender Default Notice.

**SECTION 21**

**HEADINGS**

All headings and subheadings employed within this Agreement are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

**SECTION 22**

**FORCE MAJEURE**

Any delays in the performance of any obligation of Manager or Owner under this Agreement shall be excused to the extent that such delays are caused by wars, national emergencies, natural disasters, strikes, labor disputes, utility failures, governmental regulations, riots, adverse weather, and other similar causes not within the control of Manager or Owner, and any time periods required for performance shall be extended accordingly. The availability or unavailability of funds to a party shall not excuse a delay in performance under this Agreement.

**SECTION 23**

**COMPLETE AGREEMENT**

This Agreement, including any specified attachments, constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Project and supersedes and replaces any and all previous management agreements entered into and/or negotiated between Owner and Manager relating to the Project covered by this Agreement. No change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any and all amendments, additions or deletions to this Agreement shall be null and void unless signed and delivered by Owner and Manager. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, entering into and executing this Agreement has relied upon no warranties, representations, covenants or agreements, express or implied, to such party, other than those expressly set forth herein.

**SECTION 24**

**RIGHTS CUMULATIVE: NO WAIVER**

No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy as provided in this Agreement, shall not impair any such right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties to it may be exercised from time to time and as often as may be deemed expedient by such party.

**SECTION 25**

**APPLICABLE LAW AND LITIGATION**

25.1 INTERPRETATION: The execution, interpretation and performance of this Agreement shall in all respects be controlled and governed by the laws of the District of Columbia. If any part of this Agreement shall be declared invalid or unenforceable, Manager shall have the option to terminate this Agreement by notice to Owner.

25.2 WAIVER OF RIGHT TO TRIAL BY JURY. The parties hereby expressly waive any right to trial by jury of any claim, demand or cause of action (a) arising under this Agreement, including any amendments of this Agreement, or (b) in any way connected with or related to the dealings of the parties to this Agreement with respect to this Agreement, in each case whether now existing or hereafter arising, and the parties hereby agree and consent that any such claim, demand, or cause of action shall be decided by court trial without a jury, and that either party may file a copy of this Section 25.2 with any court as written evidence of the consent of the other party to the waiver of the other party’s right to trial by jury.

**SECTION 26**

**NOTICES**

Any notices, demands, consents and reports necessary or provided for under this Agreement shall be in writing and shall be addressed as follows, or at such other address as Owner and Manager individually may specify hereafter in writing:

MANAGER:

WITH COPY TO:

OWNER:

WITH COPY TO:

Such notice or other communication may be mailed by United States registered or certified mail, return receipt requested, postage prepaid, and may be deposited in a United States Post Office or a depository for the receipt of mail regularly maintained by the post office. Such notices, demands, consents and reports may also be delivered by hand or by any other receipted method or means permitted by law. For purposes of this Agreement, notices shall be deemed to have been “given” or “delivered” upon personal delivery thereof or forty-eight (48) hours after having been deposited in the United States mail as provided herein.

**SECTION 27**

**AGREEMENT BINDING UPON SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon the parties hereto and their respective personal representatives, heirs, administrators, executors, successors and assigns.

[Remainder of Page Intentionally Left Blank.  
Signatures Contained on Following Page.]

IN WITNESS WHEREOF, the parties hereto have affixed and caused to be affixed their respective signatures as of the day and year first written above.

OWNER

By:

WITNESS:

By:

Name:

Title:

MANAGING AGENT

Management Inc.

By: