

## PROPERTY MANAGEMENT AGREEMENT

This Agreement is made as of this **1<sup>st</sup>** day of **November 2024** by and between **POMEROY SENIOR HOUSING LIMITED PARTNERSHIP**, (hereinafter called “Owner” and/or “CHA”) and **Winn Managed Properties, LLC** (hereinafter called “Agent”).

1. Appointment and Acceptance. Owner appoints Agent as its exclusive agent for the management of the property described in Section 2 of this Agreement, which management shall begin on the date of this Agreement and shall continue thereafter in accordance with the terms of this Agreement, and Agent accepts the appointment, upon the terms and conditions set forth in this Agreement.

2. Description of Project. The property to be managed by Agent is a residential housing development, consisting of land, buildings and other improvements (the “Project”). The Project is further described as follows:

NAME:	<b>Pomeroy Apartments</b>
ADDRESS:	<b>5850 North Kenmore Avenue,</b>
CITY, STATE, ZIP:	<b>Chicago, Illinois 60660</b>
NO. OF DWELLING UNITS:	<b>105</b>
NO. OF COMMERCIAL SPACES/SQUARE FEET:	

3. Definitions. Certain defined terms are used in the Agreement and related Exhibits, based on certain requirements specific to the Project. To the extent they are used in this Agreement and Exhibits, the following terms shall mean:

- a. “Agent” shall mean **Winn Managed Properties, LLC**, the private property management company authorized by this Agreement to manage the Property described herein and for purposes of indemnities and other relevant provisions herein, Agent shall also include managers, members, officers, directors, agents, and employees of Agent and members, officers, directors, trustees, partners, managers, agents, or employees of any manager or member of Agent.
- b. “ACC” shall mean the Annual Contributions Contract(s), including all relevant amendments, pursuant to which HUD provides funding to the CHA for the administration, management and operation of the Property.
- c. “Act” shall mean the United States Housing Act of 1937 (42 U.S.C. 1437, et seq.), as amended from time to time, any successor legislation and all implementing regulations issued thereunder or in furtherance thereof.
- d. “Agreement” shall mean this Property Management Agreement for the administration, management and operation of the Property, including (i) all

Exhibits attached to it and incorporated by reference; (ii) all existing CHA policies and procedures effective during the term of the Agreement and incorporated by reference copies of which have been provided to Agent; and (iii) all subsequent amendments, modifications or revisions made in accordance with its terms.

- e. “ACOP” shall mean the latest version of the CHA’s Admissions and Continued Occupancy Policy, which is the statement of CHA’s policies and procedures relating to the admission of and continued occupancy in its public housing program, as may be amended from time to time.
- f. “Annual Plan” shall mean the plan prepared annually by the CHA pursuant to the Moving to Work (“MTW”) Demonstration Agreement by and between HUD and the CHA as it may be amended or extended, and in accordance with Section 204 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, and any successor annual plan prepared in accordance with federal laws.
- g. “Applicable Public Housing Requirements” shall mean the ACC, the Act, as revised and amended per the MTW Agreement, any grants or agreements, the HOPE VI Grant Agreement, HUD notices (including any notices of fund availability under which the Public Housing Authority (PHA) received an award of HOPE VI funds for use in connection with the Property), the Declaration of Restrictive Covenants, other written policies and procedures of HUD, the ACOP, and all pertinent Federal statutory executive orders and regulatory requirements applicable to public housing, as those requirements may be amended from time to time.
- h. “Claim” shall have the meaning set forth below.
- i. “Commencement Date” shall have the meaning set forth below.
- j. “Corrupt Activity” shall mean the commission, or attempted commission of bribery, theft, fraud, forgery, perjury, dishonesty or deceit under any local, state or federal law, including the conspiracy to engage in any of the aforementioned acts.
- k. “Deliverables” shall have the meaning set forth below.
- l. “Fiscal Year” shall mean calendar year unless specifically provided to the contrary herein.
- m. “Governing Documents” shall mean those documents listed in Exhibit D that detail specific operating and compliance requirements for the Property.

- n. “HUD” means the United States Department of Housing and Urban Development.
- o. “HCV Administrative Plan” shall mean the latest version of the CHA’s Housing Choice Voucher Program Administrative Plan, which is the statement of CHA’s policies and procedures relating to the admissions and continued occupancy in the various tenant-based and project-based Section 8 housing programs administered by CHA.
- p. “Lease” shall mean any lease in which Owner has agreed to lease and a Tenant has agreed to accept a residential dwelling unit of the Property or Non-dwelling unit of the Property identified in the lease in accordance with the terms of the lease.
- q. “Lease Rider” shall mean a rider, as it may be modified from time to time by the Owner, which must be made part of each Lease as appropriate for tax credit units, public housing units, Non-dwelling units and Section 8 assisted units.
- r. “Management Fee” shall have the meaning set forth in Section 29 herein.
- s. “Management Plan” shall mean Agent’s written description of the manner in which the Property shall be operated that has been approved by the Owner; the Management Plan may be modified from time to time upon written agreement of the Owner and must be strictly adhered to by Agent. The initial Management Plan is attached hereto as Exhibit B.
- t. The “Mortgage” is an instrument of agreement between Owner, as Mortgagor, and the mortgagee, creating a lien on the Project as security for the payment of debt, which Mortgage is insured by HUD.
- u. “Mortgagee” means any holder of the Mortgage.
- v. “Non-dwelling” shall mean those units approved by CHA and HUD, if necessary, to be used for non-residential purposes.
- w. “OIG” shall mean the CHA’s Office of the Inspector General.
- x. “Operating Account” shall mean an account established by Owner to disburse funds to Agent to pay the normal and reasonable expenses for the operation and maintenance of the Property.
- y. “Operating Budget” shall mean the annual operating budget currently approved by the CHA and attached hereto as Exhibit C, and any subsequent operating budget(s) approved by the CHA.
- z. “Owner” shall mean the Chicago Housing Authority or “CHA.”

- aa. “Performance Standards” shall mean the standards or factors the CHA will use in evaluating the performance of Agent under this Agreement including the Public Housing Assessment System (“PHAS”) or such other systems as HUD may designate, as set forth in Exhibit F.
- bb. “Property” shall mean the real estate properties and corresponding addresses set forth in Section 2 above.
- cc. “Public Housing Units” shall mean the units of public housing at the Property.
- dd. “Rent” shall mean that monthly amount which Tenant is obligated to pay Owner pursuant to the terms of a Lease.
- ee. “Secretary” means the Secretary of HUD.
- ff. “Section 8 Units” means any unit subsidized under the HUD Section 8 Program (as defined in Section 6 below).
- gg. “Security Deposit Account” shall have the meaning set forth in Section 12(j) herein.
- hh. “Services” shall mean the administration, management and operation of the Property to be provided by Agent in accordance with the terms of this Agreement.
- ii. “Tax Credit Units” means any unit operated in a manner which will qualify the Project to receive low income housing tax credits as described in Section 5 below.
- jj. “Tenant” shall mean a person, family or entity occupying a unit in a Property pursuant to a Lease.

4. **Compliance with Applicable Laws and Notification to Owner.**

Agent shall comply fully with all applicable federal, state, county, municipal, and special district laws, statutes, ordinances, rules, regulations and orders relative to the Services, including, but not limited to the marketing, renting, leasing, use, operation, repair and maintenance of the Property, the selection and treatment of Tenants, investigation of credit, collection of rents, disclosure of information to and about Tenants and prospective Tenants, and the eviction of Tenants.

Agent shall at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulation and executive orders of the federal, state and local government, now existing or hereinafter in effect, which may in any manner affect the performance of this Agreement, including but not limited to Section 6 of the Housing Act of 1937, 42 U.S.C. §1437, the Privacy Act of 1974, 5 U.S.C. §552(a), The Freedom of Information Act (“FOIA”), 5 U.S.C. §552, and Section 208 of the E-Government Act, and 24 C.F.R. Part 5 and all other applicable HUD regulations; the Uniform Administrative Requirements, Cost

Principles, and Audit Requirements contained in 2 C.F.R. Part 200, (2014), as amended; Title VI of the Civil Rights Act of 1967 (42 U.S.C. 2000d et seq.); Fair Housing Act (42 U.S.C. 3601-20 et seq.); Executive Order 11063, as amended by Executive Order 12259; Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.); Rehabilitation Act of 1973 (29 U.S.C. 794); Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5); Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.); National Environmental Policy Act of 1969 (24 C.F.R. Part 58); Clean Air Act (42 U.S.C. § 7401/et seq.); Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), as amended; Executive Order 11246, as amended by Executive Orders 12086 and 11375; Executive Order 12372; Copeland “Anti-Kickback” Act (18 U.S.C. § 874 and 40 U.S.C. § 276); Byrd “Anti-Lobbying” Amendment (31 U.S.C. § 1352); and Debarment and Suspension (Executive Orders 12549 and 12689). Additionally, Agent shall comply with the applicable provisions of 2 C.F.R. Part 200, as amended, succeeded or revised; and the Mandatory Standards and Policies relating to energy efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Illinois Energy Policy and Conservation Act (Pub. L 94-163, 89 Stat. 871).

Agent shall promptly remedy any violation of any such law, ordinance, rule or regulation which it knows about and shall notify Owner by the end of the next business day after Agent receives written notice of any violation for which Owner may be subject to a penalty. Agent shall furnish whatever information is requested by Owner that would be necessary for Owner to determine whether Agent is acting in compliance with applicable laws and the terms and conditions of this Agreement.

Agent also acknowledges that Owner, as a Moving to Work ("MTW") agency, is also governed by the HUD statutory laws and regulations and the approved HUD policies of the CHA MTW Annual Plan. Owners' policies and approved MTW Annual Plan modifications for its various programs are incorporated into its Admissions and Continued Occupancy Policy ("ACOP") and its Housing Choice Voucher Program Administrative Plan ("Adm. Plan"). As the additional Governing Documents, Agent, on behalf of Owner, will comply with use of these documents in the management of Owners' properties as applicable to the corresponding statutory programs. If there is a conflict with the required statutory program and CHA's Governing documents, CHA's Governing documents will apply regarding its units. If there is a statutory conflict between the low income housing tax credits ("LIHTC") under Section 42 of the Internal Revenue Code (the "Tax Credit Program") requirements and the CHA Governing documents, said LITHC regulations will apply regarding CHA's units.

5. **Tax Credit Regulatory Compliance.** The Project receives the benefit of certain financing and, as a condition of such financing, is required to be operated in a manner which will qualify the Project to receive low income housing tax credits ("LIHTC") under Section 42 of the Internal Revenue Code (the "Tax Credit Program"). The Project is therefore subject to certain operational requirements and restrictions as described in Exhibit A (the "Project Requirements"). Owner will provide Agent with the specific compliance requirements as

required by Owner’s financing and regulatory documents in accordance with the Tax Credit Regulations, as defined herein. In performing its duties hereunder, Agent will comply with, and will cause the Project to comply with the Management Plan attached hereto as Exhibit B (as such Management Plan may be amended from time to time), all Project Requirements, and all regulations governing properties which receive LIHTC (the “Tax Credit Regulations”).

6. **HUD Requirements.** The Project has secured a grant under the HUD project-based Section 8 subsidy program (the “Section 8 Program”) and in connection therewith has entered into a Housing Assistance Payment Contract (the “Housing Assistance Payment Contract”). In addition, Owner has entered into a regulatory agreement with the Mortgagee whereby Owner is obligated to provide for management of the Project in a manner satisfactory to the Mortgagee and/or the Secretary (the “Regulatory Agreement”). Owner has furnished or will furnish Agent with copies of the Regulatory Agreement. In performing its duties under this Agreement, Agent will comply with all pertinent requirements of the Regulatory Agreement and the directives of the Secretary. In the event any instructions from Owner are in conflict with such requirements and/or directives, the latter will prevail. In conformity with HUD requirements, Owner and Agent have executed or will execute HUD Form 9839-B Management Certification for Projects with Identity-of-Interest or Independent Agents (“Management Certification”) and related documentation and have submitted or will submit same to HUD for approval.

Additional requirements for Agent are included on Exhibit A attached hereto and incorporated herein.

7. **Section 3 and CHA’s Diversity and Inclusion Contract Requirements.**
  - a. Section 3 – Compliance: Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. § 1701u, (Section 3), and the regulations implementing Section 3 at 24 C.F.R. Part 75 – Economic Opportunities for Low- and Very Low-Income Persons, require that any contract or subcontract entered into for the benefit of public housing residents shall require that, to the greatest extent feasible, economic opportunity in the form of training, employment, contracting, and other economic opportunities arising from the expenditure of public housing assistance for housing rehabilitation and housing construction be directed to low- and very low-income persons. The parties to this contract agree to comply with HUD’s regulations in 24 C.F.R Part 75 and CHA’s Diversity and Inclusion Contract Requirements regarding employment, subcontracting and training opportunities for Section 3 Workers, Targeted Section 3 Workers, and Section 3 Business Concerns.
  - b. CHA’s Diversity and Inclusion Contract Requirements are attached hereto as Exhibit E. The Diversity and Inclusion Contract Requirements and Agent’s

approved Compliance Utilization Plan (as such may be updated) are incorporated by reference into this Agreement.

- c. Documenting and Reporting. The Agent and its subcontractors shall provide all required compliance data via CHA's electronic system available at <https://cha.diversitycompliance.com/>. The Agent and its subcontractors shall be responsible for responding to any requests for data or information by the noted response due dates and shall check the electronic system on a regular basis to manage contact information and contract records. The Agent shall also be responsible for ensuring that all subcontractors have completed all requested items with complete and accurate information and that their contact information is current.

8. **Management Input Relating to HUD Processing.** Agent will advise and assist Owner with respect to management input during any remaining stages of HUD mortgage insurance processing. Agent's specific tasks will be as follows:

- a. Preparation and submission to Owner of a recommended Operating Budget for the initial operating year of the Project.
- b. Preparation and submission to HUD of any appropriate subsidy forms (e.g., Forms HUD-50059 – Certification / Recertification of Tenant Eligibility; HUD-50059a -- Worksheet for Computing Net Family Contribution, Section 8 Program; and HUD-52670 -- Housing Owner's Certification and Application for Housing Assistance Payments).
- c. Participation in any pre-occupancy conferences with HUD officials.
- d. Participation and submission to Owner and for submission to HUD of the monthly Statement of Income and Expenses (Forms HUD-93479, HUD-93480, HUD-93481) throughout the period from initial occupancy through the achievement of sustaining (95%) occupancy.
- e. Participation in the on-site inspection of the Project, required by HUD approximately ninety (90) days subsequent to initial occupancy.

9. **Basic Information.** In the case of new projects, as soon as possible, Owner will furnish Agent with a complete set of plans and specifications for the Project as approved by HUD and copies of all guaranties and warranties pertinent to construction, fixtures, and equipment. Agent will familiarize itself with the character, location, construction, layout, plan, and operation of the Project, including the electrical, heating, plumbing, air-conditioning and ventilating systems, the elevators, if any, and all other mechanical equipment and amenities.

10. **Liaison with Architect and General Contractor.** In the case of new projects and projects undergoing significant rehabilitation, during the planning and construction phases, Agent will maintain direct liaison with the architect and general contractor, in order to coordinate management concerns with the design and construction of the Project, and to facilitate completion of any corrective work. Agent's responsibilities for arranging facilities and services are set forth in Section 15 of this Agreement. Agent will keep Owner advised of all significant matters in this connection.
  
11. **Marketing.** Agent will carry out marketing activities, as appropriate, observing all requirements of the Affirmative Fair Housing Marketing Plan, if applicable, as provided to Agent by Owner, and in accordance with HUD regulations. Subject to Owner's prior approval, advertising expenses will be paid out of the Operating Account, as defined herein, as Project expenses.
  
12. **Rentals.** Agent will use diligent efforts in the management of the Project, devoting such resources as are appropriate and will use reasonable efforts to offer for rent and rent the dwelling units, parking spaces and other rental facilities, if any, in the Project. Incident thereto, the following provisions will apply:
  - a. In the case of new projects, Agent will make preparation for initial rent-up.
  - b. Agent will set up and maintain an on-site management office to service the Project or make other arrangements reasonably acceptable to Owner. Agent will provide an emergency telephone number and repair capability on a twenty-four (24) hour per day basis.
  - c. To the extent applicable under the Tax Credit Program, Agent will follow the marketing plan (if any) and resident selection plan (if any) approved by Owner.
  - d. To the extent applicable under the Section 8 Program, Agent will follow an authorized tenant selection policy, giving preference to low income families who have certificates of eligibility as displaced persons.
  - e. Agent will show available units to prospective tenants.
  - f. Agent will take and process applications for rentals during normal business hours. Agent agrees to review each prospective applicant and related applicant data prior to the acceptance or rejection of said applicant. If an application is rejected, the applicant will be given the reason for rejection, in writing; and the rejected application, with reason for rejection noted thereon, will be kept on file for three (3) years. A current list of prospective tenants will be maintained in accordance with provisions of any approved marketing plan. To the extent applicable under the Section 8 Program, waiting lists of interested applicants will be kept in accordance with HUD policies — Occupancy Handbook 4350.3. As units become



available, applicants will be contacted in numerical sequence according to bedroom size. Waiting lists will be updated annually. Acceptance of applications for Section 8 Units will be cut off once it appears that no units will become available within a one-year period. Agent will maintain a list of applications it receives, the actions thereon, and the reason(s) for the action.

- g. Agent will prepare all leases and parking permits and will execute the same in Owner's name, identifying itself thereon as agent for Owner. To the extent applicable under the Section 8 Program, the terms of the leases will comply with the pertinent provisions of the Regulatory Agreement, the Housing Assistance Payments Contract, and the directives of HUD. Leases will be in a form approved by Owner, and as applicable under the Section 8 Program, by HUD, but individual leases and parking permits will not be submitted for approval to Owner or to HUD.
  - h. Owner will furnish Agent with rent schedules, as from time to time approved by the Secretary as required, showing fair market rents and basic rents for units and other charges for facilities and services. To the extent applicable under the Section 8 Program or Tax Credit Program, in no event will such fair market rents and other charges be exceeded. No leases shall be executed for amounts less than as approved by Owner. To the extent applicable under the Section 8 Program, eligibility for rents that are less than such fair market rents and the amount of such lesser rents will be determined in accordance with the Regulatory Agreement, the Housing Assistance Payments Contract, and HUD directives.
  - i. Agent will counsel all prospective tenants regarding eligibility for dwelling units and dwelling rents that are less than fair market rents, and will prepare and verify eligibility certifications and recertifications in accordance with the specific compliance requirements provided by Owner; in the case of rentals under the Section 8 Program, Agent will prepare and verify eligibility certifications and recertifications in accordance with the Regulatory Agreement, the Housing Assistance Payments Contract, HUD directives.
  - j. Agent will collect, deposit, and disburse security deposits, if required, in accordance with the terms of each tenant's lease and applicable law. Security deposits will be deposited by Agent in an interest-bearing account, separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured and a pro rata share of interest will be credited to each tenant's security deposit. This account will be carried in Agent's name and designated of record as the "**Pomeroy Apartments Security Deposit Account**" and at all times shall conform in every respect with the laws of the state in which the Project is situated.
13. **Collection of Rents and Other Receipts.** Agent will use reasonable efforts to collect, when due, rents and other charges in accordance with the terms of each lease. All funds collected

by Agent (less any amounts properly deducted or otherwise provided for and except for any security deposit and escrow funds) shall be deposited by Agent promptly in a bank account with Bank of America, N.A., or with another banking institution acceptable to Agent. This account shall be used exclusively by Agent for funds of the Project and shall be known as the Operating Account (the “Operating Account”).

All security deposit and escrow funds, if any, received by Agent shall be deposited in a separate escrow account in accordance with the laws of the state where the Project is located and with Bank of America, N.A., or with another banking institution acceptable to Agent.

Duly authorized employees of Agent will serve as the signatories for those bank accounts of Owner which are managed by Agent. Owner may also request that a duly authorized employee of Owner be authorized as a signatory on those bank accounts, provided that Owner first executed Agent’s form of bank indemnification. After termination of this Agreement, Agent agrees to cooperate with Owner to transfer either the bank accounts or the balances therein to Owner.

Agent shall have the authority, acting on behalf of Owner, to make filings with the applicable state with respect to the unclaimed/abandoned property of which Agent is aware and which relate to Property operations, the majority of these filings pertain to former tenant security deposit return checks and/or any remaining residual interest earned on those deposits. In connection with the foregoing, Agent shall, on behalf of Owner, maintain the uncashed check data, send out the required due diligence letters, and prepare, sign and submit the various state forms. In addition, Agent shall provide Owner with a summary reporting of all escheated funds.

14. **Enforcement of Leases.** Agent will use reasonable efforts to secure full compliance by each tenant with the terms of his or her lease. Voluntary compliance will be emphasized, and Agent will counsel tenants and make referrals to community agencies in cases of financial hardship or under other circumstances deemed appropriate by Agent, to the end that involuntary termination of tenancies may be avoided to the maximum extent consistent with sound management of the Project. Agent shall have the authority, acting on behalf of Owner, to terminate any tenancy when, in Agent’s judgment, sufficient cause (including, but not limited to, nonpayment of rent) for such termination. Agent is authorized to consult with legal counsel to be designated by Owner, to bring actions for eviction and to execute notices to vacate and judicial pleadings incidental to such actions; provided, however, Agent keeps Owner informed of such actions and follows such instructions as Owner may prescribe for the conduct of any such action. Attorneys’ fees and other necessary costs incurred in connection with such actions will be paid from the Operating Account as Project expenses.
15. **Maintenance and Repair.** Agent will cause the Project to be maintained and repaired in accordance with the Management Plan, as applicable, local codes, and in a condition at all times acceptable to Owner and, as required under the Section 8 Program, acceptable to

HUD, including, but not limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repair work as may be necessary, subject to any limitations imposed by Owner in addition to those contained herein. Incident thereto, the following provisions will apply:

- a. Special attention will be given to preventive maintenance and, to the greatest extent feasible; the services of regular maintenance employees will be used.
  - b. Subject to Owner's prior approval, Agent will contract with qualified independent contractors for the maintenance and repair of air-conditioning systems, other building systems, and elevators, if any, and for extraordinary repairs beyond the capability of regular maintenance employees. Agent agrees that it will maintain certain dedicated engineers in connection with the properties that it manages for Owner and its affiliates. In the event that there are temporary vacancies in of these dedicated engineer positions, Owner and Agent agree that Agent can contract with qualified independent contractors until the vacancies are filled.
  - c. Agent will systematically and promptly receive and investigate all service requests from tenants, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a twenty-four (24) hour basis. Complaints of a serious nature will be reported to Owner after investigation.
  - d. Agent is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance and repair of the Project in accordance with the approved Project budget.
  - e. Notwithstanding any of the foregoing provisions, the prior approval of Owner will be required for any expenditure which exceeds Five Thousand Dollars (\$5,000.00) in any one instance, for labor, materials, or otherwise in connection with the maintenance and repair of the Project; except for (i) expenses within the limits of and already included in the Operating Budget; or (ii) emergency repairs involving serious danger to persons or property; or (iii) expenses required to avoid suspension of any necessary service to the Project. In the latter event, Agent will inform Owner of the facts as promptly as possible.
16. **Utilities and Services.** Agent is authorized by Owner to make arrangements and/or enter into contracts for water, electricity, gas, fuel, oil, sewage and trash disposal, pest extermination, decorating, laundry facilities, and telephone, cable, and data communication services and any and all other services as may be required or advisable for the operation of the Project including, but not limited to, utility invoice processing, monitoring, and bundling services. The term of any contract made by Agent hereunder may extend beyond the term of this Agreement. Agent is authorized to enter into contracts with third party utility invoice processing, monitoring, and bundling service providers for the purposes of

processing utility invoices, monitoring utility usage, and bundling utility services at the Project in an effort to reduce utility costs and improve the Project's energy efficiency and the fees paid to such third party will be treated as a Project expense.

17. **Scope of Services.** In addition to services set forth herein, Agent's scope of services under this Agreement shall include engagement of legal counsel and management of legal counsel during any litigation or pending litigation.
  
18. **Employees.** Agent will supply to Owner a list of staff ("List of Staff") prescribing the number, qualifications, and duties of the personnel to be regularly employed in the management of the Project, including a property manager ("Manager") and maintenance, bookkeeping, clerical, and other managerial employees. All on-site personnel will be employees of Agent and not Project or Owner, and will be hired, paid, supervised, and discharged by Agent, subject to the following conditions:
  - a. The Manager will have duties of the type usually associated with such a property management position. He/she will be directly responsible to the Agent.
  
  - b. The compensation (including payroll taxes, fringe, and health and disability benefits) of the Manager and the maintenance employees will be identified on the List of Staff. Compensation of bookkeeping, clerical and other managerial personnel will be within Agent's sole discretion provided that minimum wage standards are met. Owner and Agent agree that Agent may occasionally use non site based employees to perform specific work at the Project, such as compliance staff to assist with a specific review or audit, or maintenance staff to assist with a specific repair or an inspection (the "Project Specific Staff"). Notwithstanding the foregoing, Owner and Agent agree that outside of the Project Specific Staff, or as otherwise agreed to by Agent and Owner, staff that do no work at the Project or other sites owned by Owner and its affiliates, Agent may not expense the cost of corporate team members as a Project expense.
  
  - c. Owner will reimburse Agent for compensation (including payroll taxes, fringe, and health and disability benefits) payable to all full and part time on-site management and maintenance employees, and for all local, state, and federal taxes and assessments (including but not limited to Social Security taxes, unemployment insurance, and workers' compensation insurance) incident to the employment of such personnel. Such reimbursement will be paid out of the Operating Account and will be treated as Project expenses.
  
  - d. Compensation (including payroll taxes, fringe, and health and disability benefits) payable to the on-site staff including the Manager, and all bookkeeping, clerical, and other managerial personnel, plus all local, state, and federal taxes and assessments incident to the employment of such personnel, will be borne solely by the Project, and will not be paid out of Agent's fee. The rental value of the dwelling

unit furnished rent-free to the Agent, if any, will be treated as a cost to the Project. Part-time maintenance and administrative employee compensation properly attributable to the development shall be paid from the Operating Account.

- e. Agent will establish and follow an employment policy that (1) affords residents of the Project maximum opportunities for employment in the management and operation of the Project, and (2) to the extent consistent with that consideration, affords employment opportunities to lower-income persons in the area. While Project personnel will be employed primarily on the basis of ability, Agent will make a conscientious effort to provide special assistance and training for Project residents and members of minority groups who are not otherwise qualified.
- f. Owner will reimburse Agent for reasonable costs and expenses in connection with training of employees, annual certification and licensing programs, and on-going educational opportunities as well as the associated costs for travel, food, and lodging, as agreed to by Agent and Owner. Such reimbursement will be paid from the Operating Account and will be treated as a Project expense. Owner and Agent agree that costs of all training required by Owner will be treated as a Project expense.

19. **Disbursements from Operating Account.**

- a. From the funds collected and deposited by Agent in the Operating Account, Agent will make the following disbursements promptly when payable:
  - i. Compensation payable to Agent hereunder and reimbursement to Agent for compensation payable to or on account of the employees specified on the List of Staff and for the taxes and assessments payable to local, state and federal governments in connection with the employment of such personnel.
  - ii. The payments required to be made monthly by Owner to the Mortgagee, and any other lender(s), including the amounts due for principal amortization, interest, mortgage insurance premium, ground rents, taxes and assessments, fire and other hazards insurance premiums, the amount specified in the Regulatory Agreement for allocation to the reserve for replacements, and the amount required by any other lender(s) for allocation to a replacement or operating reserves.
  - iii. The payment for technology required to manage the Project including but not limited to hardware, software licensing and technology maintenance fees. Such reimbursement will be paid from the Operating Account and will be treated as a Project expense.
  - iv. The payment for reasonable costs incurred in connection with third party records storage expenses, including but not limited to document storage, off-site

electronic storage, maintenance, and retrieval costs. Such reimbursement will be paid from the Operating Account and will be treated as a Project expense.

- v. All sums otherwise due and payable as expenses of the Project.
  - b. Except for the disbursements mentioned in Subsections 15(e) and 19(a), funds will be disbursed or transferred from the Operating Account only as Owner may from time-to-time direct in writing.
  - c. In the event that the balance in the Operating Account is at any time insufficient to pay expenses when due, Agent will promptly inform Owner of that fact, and Owner will, within five (5) business days, remit to Agent sufficient funds to cover the deficiency. Notwithstanding anything to the contrary stated or implied herein, Agent shall have no obligation or responsibility to use its funds to pay Project expenses. Although Agent has no obligation whatsoever to pay any disbursements from its own funds, Agent may, in its sole discretion, use its own funds to pay any disbursement in which event such payments shall accrue interest until repaid at the prime rate as determined from time to time by Bank of America N.A. and all such amounts shall be paid to Agent from the first available Project funds or by Owner upon demand by Agent.
  - d. Notwithstanding anything to the contrary herein, to the extent any Project disbursements or expenses contemplated herein require prior HUD approval, which has not been otherwise granted, Agent and Owner shall obtain HUD approval prior to processing payment for any such expenses or disbursements.
20. **Budgets.** Annual Operating Budgets for the Project will be as approved by Owner. Except as permitted under Subsections 15(e) and 19(a) annual disbursements for each type of operating expenses itemized in the budget will not exceed the amount authorized by the approved budget. In addition to preparation and submission of a recommended Operating Budget for the initial fiscal year, Agent will prepare a recommended Operating Budget for each subsequent fiscal year beginning during the term of this Agreement, and will submit the same to Owner at least thirty (30) days before the beginning of the fiscal year. The proposed budget will be deemed approved unless Owner gives notice of disapproval within twenty (20) days of delivery. Owner will promptly inform Agent of any changes incorporated in the approved budget, and Agent will keep Owner informed of any anticipated deviation from the receipts or disbursements stated in the approved budget.
21. **Records and Reports for Section 8 Units.** In addition to any other requirements specified in this Agreement, Agent will have the following responsibilities with respect to records and reports for all Section 8 Units:
- a. Agent will establish and maintain a comprehensive system of records, books, and accounts in a manner conforming to the directives of the Secretary of HUD, and

otherwise satisfactory to Owner. All records, books, and accounts will be subject to examination at reasonable hours by any authorized representative of Owner.

- b. With respect to each fiscal year ending during the term of this Agreement, Agent will have an annual financial report prepared by a certified public accountant or other person acceptable to Owner, based upon the preparer's examination of the books and records of Owner and Agent. The report will be prepared in accordance with the directives of HUD, will be certified by the preparer, and will be submitted to Owner within sixty (60) days after the end of the fiscal year, for Owner's further certification and submission to the Secretary. Compensation for the preparer's services will be paid out of the Operating Account as an expense of the Project.
- c. Agent will prepare a quarterly report comparing actual and budgeted figures for receipts and disbursements and will submit each such report to Owner within fifteen (15) days after the end of the quarter covered.
- d. Agent will furnish such information (including occupancy reports) as may be reasonably requested by Owner or the Secretary from time to time with respect to the financial, physical, or operational condition of the Project.
- e. Agent will prepare monthly, or according to the HUD recommended schedule, reports and forms as listed below, or further required by HUD under the Section 8 Housing Assistance Payments Program as such requirements are determined and published:
  - i. Form 93479 Monthly Report for Establishing Net Income;
  - ii. Form 93480 Schedule of Disbursements;
  - iii. Form 93481 Schedule of Accounts Payable;
  - iv. Form 2410 Statement of Profit and Loss;
  - v. Form 52670 Owner's Certification & Application for Hsg Assist. Payments;
  - vi. Form 52670A Part I Schedule of Housing Assistance Payments Payable;
  - vii. Form 52670A Part II Claim for Security Deposit and Vacancy Loss;
  - viii. Form 50059 Application for Tenant Eligibility and Recertification;
  - ix. Form 52684 Section 8 Housing Assistance Payments Program form.
- f. By the fifteenth (15th) day of each month, Agent will furnish Owner with an itemized list of all delinquent accounts, including rental accounts, as of the tenth (10th) day of the same month.
- g. By the tenth (10th) day of each month, Agent will furnish Owner with a statement of receipts and disbursements during the previous month, and with a schedule of accounts receivable and payable and reconciled bank statements for the Operating Account and Security Deposit Account as of the end of the previous month.

- h. If, after the Project reaches sustaining ninety-five percent (95%) occupancy, the rental collections plus HUD subsidy fall below Project operating expenses for a sustained period of sixty (60) days, Agent will immediately send written notification of the same to Owner and to the appropriate HUD Area/Insuring Office.
- i. Except as otherwise provided in this Agreement, and in particular except as provided in 19(b), as included and the approved budgets, and as agreed to CHA, including specific expenses agreed to prior to commencement of this Agreement, as it relates to employees, all off-site bookkeeping, clerical, and other management overhead expenses (including but not limited to costs of office supplies and equipment, data processing services, postage, transportation for Agent personnel and telephone services) will be borne by Agent out of its own funds and will not be treated as Project expenses.

22. **Records and Reports for Tax Credit Units.** In addition to any other requirements specified in this Agreement and in the Tax Credit Regulations, Agent will have the following responsibilities with respect to records and reports in connection with the Tax Credit Units:

- a. Within sixty (60) days following the end of each fiscal year of the Project, Owner shall be furnished with a complete annual financial report for the Project based upon an examination of the books and records and including (i) a report containing audited financial statements for the prior fiscal year, including a profit and loss statement, a balance sheet, a statement of partner's equity, and a cash flow statement, (ii) an unaudited comparison of the actual results of the operations of the Project during the prior fiscal year with Operating Budget for such year, (iii) a report of the occupancy level of the Project, (iv) a statement indicating if there are any operating deficits or anticipated operating deficits and if so, the manner in which it is anticipated such deficits will be funded, and (v) any other information regarding the Project and its operations during the prior fiscal year reasonably requested by Owner. This report shall be prepared in conformity with generally accepted accounting principles. The costs of preparing this report will be paid out of the Operating Account as an expense of the Project.
- b. By the fifteenth (15) day of each month, Agent will furnish Owner with a statement of receipts, expenses and disbursements for the previous month and with a schedule of accounts receivable and payable and reconciled bank statements as of the end of the previous month.

23. **Bids and Purchase Discounts, Rebates, or Commissions.** Owner and Agent agree to use commercially reasonable efforts to obtain contract materials, supplies, and services at the lowest possible cost and on the terms most advantageous to the Project and to secure and credit to the Project all discounts, rebates, or commissions obtainable with respect to purchases, service contracts and other transactions on behalf of the Project. Owner agrees



that all goods and services purchased from individuals or companies having an identity-of-interest with Agent or Owner shall be purchased at costs not in excess of those that would be incurred in making arms-length purchases on the open market. Agent shall solicit written cost estimates (i.e., bids) from at least three (3) contractors or suppliers for any work item which Owner estimates will cost **\$10,000** or more and for any contract or ongoing supply or service arrangement which is estimated to exceed **\$10,000** per year. Agent agrees to accept the bid which represents the lowest price taking into consideration the bidder's reputation for quality of workmanship or materials and timely performance, and the time frame within which the service or goods are needed. For any contract or ongoing supply or service arrangement obtainable from more than one source and estimated to cost less than **\$10,000**, Agent shall solicit verbal or written cost estimates, as necessary to assure that the Project is obtaining services, supplies and purchases at the lowest possible cost. Agent must make a written record of any verbal estimate obtained. Copies of all required bids and documentation of all other written or verbal cost comparisons made by Agent shall be made part of the Project's records and shall be retained for three (3) years from the date the work was completed. This documentation shall be subject to inspection by the Secretary or his/her designated person, and Agent agrees to submit such documentation upon request. Agent further agrees to include the following clause in any contract entered into with an identity-of-interest firm for provision of goods and services to the Project, the cost of which is to be paid from Project funds: "Upon request by Agent or the Secretary, (name of contractor or supplier) will make available to the Secretary at a reasonable time and place; (name of contractor or supplier's) records which relate to goods or services provided to the Project." Agent agrees to request such records from the contractor or supplier within seven (7) days of receipt of a written request from the Secretary or his/her designated person. Agent agrees to make available to the Secretary all its records and the records of its identity-of-interest companies, if any, which relate to the provision of goods or services to the Project whenever Project funds have been used to pay for such goods and/or services (other than management services.) In the event charges levied by an identity-of-interest firm exceed charges which were or would have been levied by non-identity-of-interest firms for similar services or materials, Owner, at the request of the HUD, shall refund any excessive amounts which were paid from Project funds. If Owner and Field Office cannot agree with HUD as to the amount of refund due, the Loan Management Branch Chief shall request the CHA Inspector General to review Agent's or identity-of-interest firm's records related to the transactions under review. The CHA Inspector General shall provide the Loan Management Branch Chief with an estimate of the amount of refund due. The Deputy Director for Housing Management and the Chief shall review the CHA Inspector General's report and shall notify Owner of the amount of refund due. Within twenty (20) days of receipt of the Field Office's letter, Owner shall refund any amounts found to be excessive.

24. **Tenant/Management Relations.** Agent will encourage and assist residents of the Project in forming and maintaining representative organizations to promote their common interests and will maintain good-faith communication with such organizations to the end that

problems affecting the Project and its residents may be avoided or solved on the basis of mutual self-interest.

25. **Insurance.** At all times during the term of the Agreement, the parties shall procure and maintain, or to cause to be procured and maintained, in each case to be paid for by Owner as an expense of the Project, the respective insurance coverages described below in this Section. If requested by Owner in writing, Agent shall use commercially reasonable efforts to procure Owner's insurance coverages on behalf of Owner in Agent's portfolio insurance programs, if deemed an acceptable risk and shall promptly notify Owner if Agent is unable to add Owner's asset to the Agent master insurance programs.

a. **Owner's Insurance Policies**

i. Owner shall maintain in full force and effect commercial general liability insurance on an occurrence form including premises/operations liability, protective liability, contractual liability, products/completed operations liability and personal and advertising liability coverages. The ISO commercial general liability policy form CG 00 01 or its equivalent should be utilized. The following minimum limits of liability shall be maintained: \$1,000,000 each occurrence; \$1,000,000 personal and advertising injury; \$1,000,000 products/completed operations aggregate; \$2,000,000 general policy aggregate. Owner shall be responsible for any deductible or retention in connection with Owner's liability policy. A per location general aggregate limit is required if Owner's general liability insurance policy covers more than one location. Agent shall be designated as an insured under Owner's policy which shall be primary and noncontributory to any other coverage available to Agent.

ii. Owner shall maintain in full force and effect automobile liability insurance for all CHA or Owner owned, leased, non-owned and hired vehicles under use by Agent under performance of duties of contract. The minimum limit of liability shall be \$1,000,000 each accident, combined single limit for bodily injury and property damage. The policy shall include auto contractual liability coverage. The policy shall include Agent as an additional insured.

iii. Owner shall maintain in full force and effect excess liability insurance providing following form coverage over the underlying general liability and automobile liability insurance policies described above with minimum occurrence and aggregate limits of \$5,000,000. Agent shall be designated as an insured under Owner's policy which shall be primary and noncontributory to any other coverage available to Agent.

iv. Owner shall maintain in full force and effect "All-risk" property insurance to cover physical loss or damage to the Project in an amount equal to the 100% replacement cost of the Project; and business interruption and extra expense

coverage for the full recovery of the net profits of the Project for the entire period of any such business interruption. Coverage shall be in effect from the date on which Agent first assumes management responsibility of the Project and throughout the term of this Agreement.

b. Agent's Insurance Policies

- i. Auto Liability Insurance: When any motor vehicles (owned, non-owned and hired), which are not owned by CHA or Owner, are used in connection with the Services to be performed, Agent shall provide Comprehensive Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence, Combined Single Limits, for bodily injury and property damage. The CHA shall be endorsed as an additional insured on Agent's policy on a primary and non-contributory basis.
- ii. Professional Liability Insurance: Covering acts, errors, or omissions shall be maintained with limits of not less than \$5,000,000 per occurrence. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, the start of Services under the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.
- iii. General Liability Insurance provided shall have a limit of not less than Two Million Dollars (\$2,000,000) per occurrence with an aggregate of not less than Two Million Dollars (\$2,000,000). The insurance policy is to include coverage for Bodily Injury and Property Damage, Contractual Liability, Products-Completed Operations, Personal & Advertising Injury. The policy shall cover any acts of Manager outside the Scope of Services of the Property Management Agreement with Owner.
- iv. Agent shall maintain in full force and effect workers' compensation insurance providing statutory coverage and employers liability insurance with minimum limits of \$1,000,000 each accident, bodily injury by accident; \$1,000,000 each employee, bodily injury by disease; \$1,000,000 policy limit, bodily injury by disease.
- v. Agent shall maintain a so called Crime or Fidelity bond/policy which insures against losses resulting from dishonest or fraudulent acts committed by any employees or agents of Agent. The minimum limit maintained shall at least be equal to two (2) months' gross income from the Project with a maximum deductible of \$100,000.
- vi. Agent shall maintain Employment Practice Liability and Environmental Liability insurance arising out of Agent's operations at the Project and any other insurance it deems appropriate.

- vii. Owner shall be responsible for any deductible or retention in connection with Agent's policies.
  - c. Each of the insurance coverages described above, general liability, automobile liability, workers' compensation, employer's liability, crime and fidelity and umbrella excess liability must be purchased from insurance companies licensed to do business in the state where the property is located and have a current A.M. Best's rating of A-, VIII or higher.
  - d. Owner and Agent each agrees to furnish certificates of the above-mentioned insurance before Agent assumes management responsibility of the Project, and at each renewal. To the extent reasonably available, such certificates shall state that in the event of cancellation, written notification shall be given at least thirty (30) days in advance of such cancellation and the relevant policy provision that permits the certification of advanced written notice of cancellation must be attached to the certificate. In addition, Owner and Agent each agrees to provide the other with at least thirty (30) days' notice prior to any cancellation or material change in coverage for any of its policies.
  - e. Neither Agent nor Owner shall assert against the other, and do hereby waive with respect to each other, any claims for any losses, damages, liability or expenses incurred or sustained by either of them on account of injury to persons or damage to property arising out of ownership, operation or management of the Project, to the extent that the same are covered by the insurance required under this Article. Each policy of insurance required herein shall contain a specific waiver of subrogation reflecting the provisions of this Section, and a provision to the effect that the existence of the preceding waiver shall not affect the validity of any such policy or the obligation of the insurer to pay the full amount of any loss sustained.
26. **Compliance with Governmental Orders.** Agent will take such actions as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Project, provided Agent shall take no such action so long as Owner is contesting, or has affirmed its intention to contest, any such order or requirement. Agent will notify Owner in writing of all notices of such orders or other requirements, within seventy-two (72) hours from the time of their receipt.
27. **Compliance with Regulations, Contracts and Agreements.** Unless otherwise specifically directed by Owner, Agent will be responsible for full compliance with Tax Credit Regulations, provided, however, that such compliance will be an expense of the Project and Agent will not be required to make any payments from its own funds or incur any individual liability. Agent shall not knowingly permit the Project, or any portion thereof, to be used for any purpose that might void any policy of insurance relating to the Project or that might render any loss thereunder uncollectible.

28. **Nondiscrimination.** In the performance of its obligations under this Agreement, Agent will comply with the provisions of any federal, state, or local law prohibiting discrimination in housing on the grounds of race, color, sex, creed, or national origin, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352, 78 State, 241), all requirements imposed by or pursuant to the Regulations of the Secretary (24CFR, Subtitle A, Part 1) issued pursuant to that Title; regulations issued pursuant to Executive Order 11063 and Title VIII of the 1968 Civil Rights Act.
29. **Agent's Compensation.** For the services provided hereunder, Agent will receive a Management Fee paid out of the Operating Account and treated as a Project expense. The Management Fee will be in the amount of **\$62.00 (sixty-two dollars) per occupied unit per month**, with a minimum occupancy assumption of at least **96% (ninety-six percent)**. This base fee will remain the same for the initial two year term and then increase by the Consumer Price Index on an annual basis thereafter. All fees will be paid on the fifteenth (15th) day of each month throughout the term of this Agreement or as this Agreement may be extended.

From time to time, the Management Fee set forth in this Agreement may be amended with the approval of Owner, and as applicable, through the Management Certification, but in no event shall the Management Fee percentage applicable to the Section 8 Units be higher than the amount allowed by HUD.

If any unit is not rented, vacant, or not occupied due to lead paint issues or casualty loss or if any unit requires rehabilitation due either to a failure to pass a required inspection or in anticipation of a required inspection, Agent will be allowed to include that unit's approved monthly rent as collected rent.

30. **Term.** The term of Agent's management of the Project under this Agreement shall be for **two(2) years** beginning on **November 1, 2024**.
- a. This Agreement may be terminated by the mutual consent of Owner and Agent as of the end of any calendar month; provided that at least sixty **(60) days** advance written notice thereof is given to the Secretary and the Mortgagee.
  - b. This Agreement may be terminated by either Owner or Agent for convenience as of the end of any calendar month; provided that at least ninety (90) days advance written notice thereof is given to the other party, the Secretary and the Mortgagee.
  - c. In the event that a petition in bankruptcy is filed by or against either Owner or Agent, the other party may terminate this Agreement as of the end of any calendar

month, provided that at least **sixty (60) days** advance written notice thereof is given the Secretary and the Mortgagee.

- d. The Secretary shall have the right to terminate this Agreement at the end of any calendar month, for failure to comply with the provisions of the Management Certification or for other good cause, upon **sixty (60) days** advance written notice to each of Owner and Agent, or, in the event of a default under the mortgage note, regulatory agreement or subsidy contract, immediately upon the Secretary's issuance of a notice of termination to Owner and Agent. In the event of termination by the Secretary, Owner will make promptly arrangements for providing management satisfactory to the Secretary.
  - e. Upon termination, Agent will submit to Owner any financial statements required by the Secretary. After Owner and Agent have accounted to each other with respect to all matters outstanding as of the date of termination, Owner will furnish Agent security, in form and principal amount satisfactory to Agent, against any obligations or liabilities which Agent may properly have incurred on behalf of Owner hereunder. In the event of termination, Agent will turn over to Owner all of the Project's cash, trust accounts, investments, and records within **sixty (60) days** of the date the Agreement is terminated. Agent shall be compensated on an hourly basis at a rate agreed upon by the parties for any services performed by Agent after the termination of this Agreement.
  - f. This Agreement may also be terminated for material breach by either party provided that Owner may not seek to terminate the Agreement for material breach unless Owner has first given written notice to Agent, setting forth with specificity the claimed breach(es) and Agent fails to cure the same within **sixty (60) days** (or such longer period if necessary under the circumstances).
  - g. Unless otherwise terminated pursuant to the terms of this Agreement, the Owner may at any time prior to the expiration of this Agreement elect to extend this Agreement for two (2) one (1) year option terms, at its sole discretion, except as provided otherwise in this Agreement or by amendment thereto, by notice in writing to Agent pursuant to Section 49 below.
31. **Prohibition Relative to Agent's Employees.** For the term of this Agreement, as it may be extended or renewed, and for one (1) year after its termination or expiration for any reason, Owner shall not employ, engage, solicit for employment or consultation, hire, consult with or use the services of any person, in any capacity whatsoever, who is currently, or during the term of this Agreement becomes, an employee of Agent, whether such services are provided for with or without compensation. Owner's obligations with respect to Winn Procedures, as defined herein, shall apply fully to any employee or former employee of Agent who becomes affiliated with Owner in any respect. In addition to its other obligations hereunder, Owner shall take all necessary precautions to ensure that any

employee or former employee of Agent who becomes affiliated with Owner in any respect keeps Winn Procedures strictly confidential in accordance with the provisions of Section 32 below.

32. **Proprietary Information.** Owner acknowledges, unconditionally and irrevocably, that the procedures, management systems, software, operational and other manuals and forms (collectively and generically, the "Winn Procedures") used by Agent in the management of the Project are highly proprietary and confidential business information. Owner shall keep such Winn Procedures strictly confidential and will not at any time, whether during the term of this Agreement or subsequent to its termination, use or employ or allow the use or employment of any of the Winn Procedures at or for the Project or at or for any other properties which are owned by it and or in which Owner has any interest or for any other purpose whatsoever.

Owner acknowledges that the use of the Winn Procedures other than by Agent in connection with Agent's business would cause irreparable harm to Agent and its affiliates; accordingly, if Owner, or anyone employed by or otherwise affiliated with Owner, ever attempts to use or uses the Winn Procedures, Owner consents to the entry of a mandatory and permanent injunction against it and its use of Winn Procedures.

In the event a court of competent jurisdiction ever makes a finding that the scope of this restriction/prohibition is overly broad or otherwise unenforceable as written, Owner shall consent to the entry of an order by the court restricting use of such Winn Procedures within limits determined by the court and to the entry of judgment in the amount of Fifty Thousand Dollars (\$50,000.00) as damages suffered by Agent.

33. **Agent Assumes No Liability for Past Practices.** Notwithstanding anything to the contrary stated or implied herein, Agent shall not be liable to Owner (or anyone claiming through Owner) in any context whatsoever for any acts or omissions of (a) Owner, (b) any past or present employees of Owner, (c) any previous owner of the Project, (d) any previous management agent employed at or providing services to the Project, or (e) any agent of (a)-(d) above. To the extent not expressly prohibited by law, Owner shall indemnify and hold Agent harmless from any and all claims, losses, demands, liabilities, actions, causes of action and obligations, of whatever nature and description, and all costs of defending same (including reasonable attorney's fees) which are in any way caused by, related to or predicated upon, any policies or practices of Owner and/or acts and/or omissions of Owner or its prior management company or any of their employees predating the date of this Agreement. Owner's failure to correct such policies and practices shall be considered a material breach of this Agreement.

In amplification of the above and not in limitation thereof, Agent shall have no liability for violations of building, zoning, environmental or other regulations, including but not limited to lead paint laws, which may exist as of the date of this Agreement but may only become known during the period this Agreement is in effect. Any regulatory violations or hazards

discovered by Agent shall be brought to the attention of Owner in writing and Owner shall promptly cure them at Owner's sole expense. Owner's failure to cure such violations or hazards shall be considered a material breach of this Agreement.

34. **Building Compliance.** Notwithstanding anything to the contrary herein, Owner acknowledges that Agent has no responsibility for the compliance of the Project or any building thereon or any equipment therein with the requirements of any building or zoning codes or with any statute, ordinance, law, or regulation of any governmental body or of any public authority or official thereof having jurisdiction, including but not limited to lead paint conditions, except to notify Owner promptly or forward to Owner promptly any complaints, warnings, notices, or summonses received by Agent relating to such matters. Owner's failure to cure any violations or hazards related to the above shall be considered a material breach of this Agreement. Owner represents that, to the best of Owner's knowledge, the Project and all Project equipment comply with all above requirements. To the extent not expressly prohibited by law, Owner shall indemnify and hold Agent harmless from any and all claims, losses, demands, liabilities, actions, causes of action and obligations, of whatever nature and description, and all costs of defending same (including reasonable attorney's fees) which are in any way caused by, related to or predicated upon any violation or alleged violations of such building codes, laws, ordinances, statutes or regulations, relating to the physical condition of the Project, including but not limited to lead paint conditions, excepting only losses caused by Agent's gross negligence or willful misconduct. Notwithstanding the foregoing, Agent agrees to cooperate with Owner to any matters related to violations of building compliance, provided that Owner provides necessary funding and the repairs otherwise fall within the scope of this Agreement.
35. **Lead Paint.** Owner acknowledges its responsibility to comply with federal, state and local laws concerning lead-based paint and agrees to provide the necessary funding and authority to Agent to address lead-based paint hazards and related compliance issues that may exist at the Project. Lead-based Paint compliance violations discovered by Agent shall be brought to the attention of Owner in writing and, to the extent there are sufficient funds available in the Project budget, Agent shall undertake efforts to cure such compliance violations at Owner's sole expense. Owner's failure to provide sufficient funds to cure such violations shall be considered a material breach of this Agreement. Agent will not show or rent any unit where doing so may, in Agent's reasonable judgment, violate federal, state or local laws addressing lead based paint hazards or housing discrimination.
36. **Indemnification.** Owner will indemnify and hold Agent harmless from all costs, expenses, damages, suits, losses or liabilities incurred by or suffered by Agent relative to the Project and/or relative to Agent's management of the Project. Agent shall not be liable for any error of judgment or mistake of fact or law; Agent shall only be liable for its own willful misconduct or gross negligence and then only to the extent not covered by insurance which benefits Owner (regardless of by whom such insurance is procured).



If Agent is ever a party to any litigation or proceeding commenced by a third party in which a claim or allegation is made that Agent (or persons for whom it may be responsible) has violated a contract, acted illegally, been negligent or otherwise committed any wrongdoing through any act or omission then, until such time as final judgment is entered against Agent finding Agent to have engaged in willful misconduct or gross negligence, all costs and expenses of defense including attorney's fees shall be borne solely by Owner. Such costs of defense shall be paid for by Agent using Project revenue or Owner advancing funds from time-to-time as defense costs are incurred. If there is such a final judgment entered against Agent that the Agent has engaged in willful misconduct or gross negligence, all costs associated with the defense associated with this finding shall be reimbursed either to the project fund or directly to the Owner within 10 days of the aforesaid court finding.

Owner and Agent specifically acknowledge and agree that each of the indemnity obligations contained in this Agreement shall survive the expiration or any earlier termination of this Agreement.

37. **Limitation of Liability.** No manager, member, officer, director, agent, or employee of Agent and no officer, director, trustee, member, partner, manager, agent, or employee of any manager or member of Agent shall have any personal liability for the performance of any obligation by Agent, or under or in connection with this Agreement or any acts done or omitted by Agent. Owner shall look only to Agent and its assets for payment or performance under this Agreement. Owner and Agent specifically acknowledge and agree that each of the indemnity obligations contained in this Agreement shall survive the expiration or any earlier termination of this Agreement.
  
38. **Relationship of Parties.** The relationship of the parties to this Agreement shall be that of principal and agent, and all duties to be performed by Agent under this Agreement shall be for and on behalf of Owner, in Owner's name, and for Owner's account. In taking any action under this Agreement, Agent shall be acting only as agent for Owner, and nothing in this Agreement shall be construed as creating a partnership, joint venture, or any other relationship between the parties to this Agreement, except that of principal and agent, or as requiring agent to bear any portion of losses arising out of or connected with the ownership or operation of the Project. Neither party shall have the power to bind or obligate the other except as expressly set forth in this Agreement, except that Agent is authorized to act with such additional authority and power as may be necessary to carry out the spirit and intent of this Agreement.
  
39. **Non Appropriation and HUD Funding.** Funding for this Agreement is subject to (a) availability of Federal funds from HUD, (b) actual receipt of the Owner's operating funds from HUD, and (c) appropriations by the CHA's Board of Commissioners. No payments shall be made or due to Agent under this Agreement beyond those amounts appropriated and budgeted by the Owner to fund payments hereunder. In the event of any such

unavailability of funding, Agent shall have the right to immediately terminate this agreement.

40. **Events of Default Defined**

Each of the following shall constitute an event of default:

- a. Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by Agent to the Owner.
- b. Agent's failure to perform any of its obligations under this Agreement including, but not limited to, the following:
  - i. Failure to perform the Services with sufficient personnel or with sufficient resources to ensure the performance of the Services or failure to perform due to a reason or circumstance within Agent's control;
  - ii. Failure to meet any of the Performance Standards set forth in this Agreement (See Exhibit F);
  - iii. Failure to perform the Services in a manner reasonably satisfactory to the Owner.
  - iv. Failure to promptly cure or re-perform within a reasonable time Services or Deliverables that were rejected as erroneous or unsatisfactory;
  - v. Discontinuance of the Services for reasons or circumstances not beyond Agent's control;
  - vi. Failure to comply with a material term of this Agreement, including, but not limited to, the provisions concerning compliance with HUD regulations, insurance and nondiscrimination;
  - vii. Any other acts specifically and expressly stated in this Agreement as constituting an event of default;
  - viii. Failure to cooperate with the CHA Inspector General in any investigations, audits, reviews, inspections or hearing;
  - ix. Failure to report fraud or other Corrupt Activity to the CHA Inspector General.
- c. Any change in majority ownership control of Agent to a new member who is not currently a member of Agent without the prior written approval of the Owner, for which written approval shall not be unreasonably withheld, conditioned or delayed.

- d. The filing of a voluntary petition of bankruptcy or insolvency or a petition for reorganization under any bankruptcy law by Agent;
- e. The consent to an involuntary petition in bankruptcy or the failure by Agent to have vacated within ninety (90) days from the date of entry thereof any order approving an involuntary petition;
- f. The entering of an order, judgment or decree by any court of competent jurisdiction, on the application of a creditor, adjudicating either Owner or Agent a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee or liquidator of all or a substantial part of such party's assets, and such order, judgment or decree shall continue unstayed and in effect for a period of one hundred twenty (120) consecutive days;
- g. Agent's default under any other agreement it may presently have or may enter into with the Owner during the term of this Agreement. Agent acknowledges and agrees that in the event of default under this Agreement the Owner may also declare a default under any such other agreements.

41. **Default Notice and Remedies.**

Within ten (10) business days after Agent has been provided notice from Owner of the occurrence of each default, Agent shall provide a statement setting forth details of such default, the action(s) that Agent has taken and/or proposes to take with respect to curing the default, and an estimated time period within which Agent will be able to cure the default.

Absent an agreed-upon time frame to cure an event of default, Agent shall be given thirty (30) calendar days to cure each event of default following Owner's notice. If Agent fails to commence, or continue diligent efforts to cure such default, following thirty (30) calendar days, the Owner may declare Agent in default of this Agreement .

If the Owner considers it to be in its best interests, it may elect not to declare default or to terminate the Agreement hereunder. The parties acknowledge that this provision is solely for the benefit of the Owner and that if Owner permits Agent to continue providing the Services despite one or more events of default, Agent shall in no way be relieved of any of its responsibilities, duties or obligations under this Agreement nor shall the Owner be considered to have waived or relinquished any of its rights hereunder.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy shall be cumulative and shall be in addition to any other remedies, existing now or hereafter, at law, in equity or by statute. No delay or failure to exercise any right or power accruing upon any event of default or

acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

42. **Termination Upon Damage or Sale.**

This Agreement shall be terminated automatically and immediately upon destruction, condemnation, sale, exchange or other disposition of all or substantially all of the Property.

43. **Duties Upon Termination.**

Upon termination of this Agreement for any reason:

- a. Agent shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;
- b. Agent will immediately deliver to Owner, all Books and Records (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. Agent shall render to Owner an accounting of all funds of Owner held by Agent relating to the Property and shall immediately cause such funds to be paid to Owner;
- d. Agent 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, including year-end IRS Form 1099 processing under its tax identification number; and
- e. Agent shall use commercially reasonable efforts to transition to any successor property management company, all contracts, leases or other agreements Agent entered into under or pursuant to the terms of this Agreement.

44. **Warranties, Representations and Covenants.**

In connection with the execution of this Agreement, Agent warrants and represents to the Owner:

- a. That Agent is financially solvent; and that it and each of its employees or agents of any tier is competent to perform the Services required under this Agreement and possesses all licenses required to perform the Services; and that Agent is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated herein.
- b. That no officer, agent or employee of Owner is employed by Agent or has a financial interest directly or indirectly in this Agreement or the compensation to be paid hereunder, except as may be permitted in writing by Owner and HUD, and that

no payment, gratuity or offer of employment shall be made in connection with this Agreement by or on behalf of Agent to any employee of Owner; and Agent further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions set forth herein shall be voidable as to Owner.

- c. That Agent is not in default at the time of the execution of this Agreement or determined by the CHA's Department of Procurement and Contracts to have been, within the last five (5) years, in default on any contract awarded by the CHA.
- d. That, except only for those representations, statements, or promises expressly contained in this Agreement, and any exhibits attached hereto and incorporated by reference herein, no representation, statement or promise, oral or in writing, or of any kind whatsoever, by Owner, its officials, officers, agents, or employees, has induced Agent to enter into this Agreement or has been relied upon by Agent.
- e. That Agent has carefully examined and analyzed the provisions and requirements of this Agreement and that it understands the nature of the Services required;
- f. That Agent is not in violation of the provisions of 18 U.S.C. § 666 (a)(2) and other Federal criminal laws applicable to public contracts funded with federal government funds, the Illinois Criminal Code, 720 ILCS 5/33E-1 et seq. (1989), as amended; and the CHA's Ethics Policy, as amended (See Exhibit D) and during the term of the Agreement will not violate the provisions of such laws and policies.
- g. That Agent has disclosed any and all relevant information to Owner, and Agent understands and agrees that any certification, affidavit or acknowledgment made under oath or failure to disclose in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination of this Agreement.
- h. That Agent is a duly organized and validly existing entity under the laws of the State of Illinois and has and will continue to have at all times during the term of this Agreement, all licenses and permits necessary to render the Services required hereunder.
- i. That Agent has the power and authority to enter into and perform all of its obligations under this Agreement, and that this Agreement, when executed will constitute the duly authorized, valid and legally binding obligation of Agent.

45. **Conflict of Interest.**

- a. No member of the governing body of the CHA or other units of government and no other officer, employee, or agent of the CHA or other unit of government who

exercises any functions or responsibilities in connection with the Services to which this Agreement pertains, shall have any personal interest, direct, or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly or CHA employee shall be entitled to any share or part of this Agreement or to any financial benefit to arise from it.

- b. Agent covenants that it and its employees presently have no interest and shall acquire no interest, direct or indirect, in any other agreement which would conflict in any manner or degree with the performance of the Services hereunder. Agent further covenants that during the performance of this Agreement, no person having any such interest shall be employed.
- c. Additionally, pursuant to the conflict of interest provisions in 2 C.F.R. §200.318 (c), no person who is an employee, agent, consultant, officer, or appointed official of the CHA and who exercises or has exercised any functions or responsibilities with respect to HUD assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to HUD activities, may obtain a financial interest or benefit from the HUD activity, or have an interest in any other contract, subcontract, or agreement with respect thereto, or the proceeds hereunder, either for himself or herself or for those whom he or she has family or business ties, during his or her tenure or for one year thereafter.
- d. Furthermore, Agent represents that it currently is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for fiscal year 1990, 31 U.S.C. Subsection 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended.

46. **Non-Liability of Public Officials.**

No official, employee or agent of the CHA shall be personally liable to Agent or Agent's successor in interest for: (i) any default or breach by the CHA under this Agreement, (ii) the Management Fee or any other fee due to Agent or Agent's successor in interest or (iii) any other obligation arising under this Agreement.

47. **Independent Agent Status.**

Agent and the Owner recognize that Agent is an agent of the Owner and not an employee, agent, partner, joint venturer, covenantor, or representative of the Owner. Agent and its employees, representatives, and agents shall at all times represent and disclose that they are Agents of the Owner and shall not represent to any third party that they are an employee, covenantor, or representative of the Owner. The Owner shall not be obligated to withhold any funds from Agent for tax or other governmental purposes, with respect to its

employees, agents or representatives. Agent, its employees, representatives, and agents shall not be entitled to receive any employment benefits offered to Owner's employees including workers' compensation insurance coverage.

Under no circumstance shall Agent undertake any action in connection with the Services other than in accordance with the terms of this Agreement. Any directives by a CHA employee contrary to the terms of this Agreement are *ultra vires* as to that CHA employee.

48. **Communication Between the Parties.**

Agent shall meet with Owner upon Owner's written request and shall keep Owner advised of items materially affecting the Property. All verbal and written communication, including required reports and submissions, between Agent and Owner shall be through the CHA's Property Department, 60 E. Van Buren St., 13<sup>th</sup> Floor, Chicago, IL 60605, or electronic mail, when required. No verbal communication between the parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation, as set forth in the Illinois Code of Civil Procedure, the Federal Rules of Civil Procedure, the local rules of the Circuit Court of Cook County, and the local rules governing the U.S. District Court for the Northern District of Illinois.

49. **Notices.**

Any notices given pursuant to this Agreement shall be in writing and shall be considered to have been given, if hand delivered or if sent by registered or certified mail, return receipt requested, or by private overnight carrier, in each instance properly addressed and with postage or other charges prepaid, in the case of Owner to:

Owner: Chicago Housing Authority  
60 E. Van Buren Street, 13<sup>th</sup> Floor  
Chicago, Illinois, 60605  
Attn: Senior Director, Portfolio Management

With a copy to: Chicago Housing Authority  
60 E. Van Buren Street, 12<sup>th</sup> Floor  
Chicago, Illinois 60605  
Attn: Chief Legal Officer

Agent: Winn Managed Properties, LLC  
c/o WinnCompanies  
One Washington Mall. Suite 500  
Boston, Massachusetts 02108  
Attn: Patrick M. Appleby, President

With a copy to: WinnCompanies  
One Washington Mall, Suite 500  
Boston, Massachusetts 02108  
Attn: General Counsel

All notices shall be considered to have been given on the earlier of receipt or three (3) days after the date of mailing or one (1) day after delivery to an overnight carrier as provided herein. Any party to this Agreement desiring to make a change in its address for the purpose of notices under this Section shall notify the other party of the change of address in the same manner as provided for in this Section for notices.

50. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of Illinois.
51. **Entire Agreement.**
- a. This Agreement constitutes the entire agreement between Owner and Agent with respect to the management and operation of the Project, and no change will be valid unless made by supplemental written agreement, executed and approved in the same manner as this Agreement.
  - b. This Agreement is binding upon successors and assigns of Owner and Agent.
52. **Interpretive Provisions.** At all times, this Agreement will be subject and subordinate to all rights of the Secretary and will inure to the benefit of and constitute a binding obligation upon Owner and Agent and their respective successors and assigns. To the extent that this Agreement confers rights upon the Secretary and the Mortgagee, if any, it will be deemed to inure to their benefit, but without liability to either, in the same manner and with the same effect as though the Secretary and the Mortgagee were parties to this Agreement.
53. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original and all of which, taken together, will constitute one instrument.
54. **Survivability.** The terms of Sections 30, 31, 32, 33, 34, 35, 36 and 37 of this Agreement shall survive the expiration or termination of this Agreement.
55. **HUD Disclaimers.**
- a. Nothing contained in the ACC or this Agreement, nor any act of HUD or the Owner, shall be deemed or construed to create any relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association



or relationship involving HUD except between HUD and the Owner as provided under the terms of the ACC.

- b. Agent acknowledges that any transfer of public housing funds by Owner to Agent shall not be deemed an assignment of such funds. Agent will not succeed to any rights or benefits of the Owner under the ACC or attain any privileges, authorities, interest, or rights in or under the ACC.
- c. Agent agrees to ensure that paragraphs (a) and (b) of this Section are inserted into any contract or subcontract involving the use of HUD funds in connection with the Property.

[No Further Text; Signature Page Follows]

IN WITNESS WHEREOF, Owner and Agent have, by their duly authorized officers, executed this Agreement on the date first above written:

AGENT:

**Winn Managed Properties, LLC**

By: Patrick M. Appleby  
Name: **Patrick M. Appleby**  
Title: President

OWNER:

**POMEROY SENIOR HOUSING LIMITED PARTNERSHIP,**  
an Illinois limited partnership

By: POMEROY HOUSING DEVELOPMENT, LLC,  
an Illinois limited liability company  
its general partner

By: Chicago Housing Authority  
an Illinois municipal corporation  
its sole member

By: Sheila Johnson  
Sheila Johnson  
Deputy Chief of Procurement and Contracts  
Chicago Housing Authority

Approved as to Form and Legality:  
CHICAGO HOUSING AUTHORITY – OFFICE OF GENERAL COUNSEL

Elizabeth Silas  
Elizabeth Silas  
Acting Chief Legal Officer  
Chicago Housing Authority