

## MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made this \_\_\_th day of \_\_\_\_\_, 2020 between Ann Arbor Affordable Housing Corporation, hereinafter called “*Owner*”, a Michigan nonprofit corporation, with principal offices located at c/o Ann Arbor Housing Commission, 2000 S. Industrial, Ann Arbor, Michigan 48104 and the Ann Arbor Housing Commission, hereinafter called “*Managing Agent*”, a Michigan public body corporate, with principal offices located at 2000 S. Industrial, Ann Arbor, Michigan 48104.

WHEREAS, Owner is the owner of a 136-unit Senior Complex intended for rental to persons defined as seniors age 62 or older, known as Lurie Terrace, and located in Ann Arbor, Michigan 48104 (the “**Senior Complex**”).

WHEREAS, Managing Agent is engaged in the business of property management; and

WHEREAS, Owner desires to engage Managing Agent as property manager under the terms set forth in this Agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Owner and Managing Agent mutually agree as follows:

### 1. DEFINITIONS.

- a. “Affiliate” means any person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the General Partner or with another designated Person, as the context may require.
- b. “Agency” means the Department of Housing and Urban Development “HUD”, in its capacity as the agency to allocate and regulate Section 8 rental assistance to the extent this program is utilized for specific units at Lurie Terrace.
- c. “Excluded Revenues” means revenues from condemnation or casualty proceeds, any cash advances from Owner, loss of rental insurance; refunds or rebates from suppliers or vendors, revenue from the sale of any personal or real property of Owner, pet fees, deposits, or from any source other than the customary operations of the Senior Complex.
- d. “Gross Operating Revenues” means the actual monthly cash collections from the customary operations of the Senior Complex consisting of rental, vending machine and laundry room receipts net of any costs or expenses, forfeited or applied deposits, rent claim settlements net of any collection fees, lease termination or modification payments, and other operating receipts, excluding applicable sales tax and refundable deposits;
- e. “Person” means any individual, partnership, corporation, trust, limited liability company, or other entity.
- f. “Project Lenders” shall mean any Person in its capacity as a holder of a loan on the Senior Complex.

- g. “Project Loans” shall mean the loans and indebtedness of the Owner to the Project Lenders.
  - h. “Regulatory Agreement” means, to the extent applicable, and collectively, any regulatory agreements and/or any declaration of covenants and restrictions heretofore or hereafter entered into between the Owner and the Project Lenders, or any documents executed by any applicable government agency, setting forth certain terms and conditions under which the Senior Complex is to be operated.
  - i. “Reserve For Replacements” means the cash funded reserve for replacements required by the Project Lenders or other entities, which shall be used exclusively for replacement expenditures (and not operational expenditures) for the Senior Complex. The Reserve for Replacements shall be funded in the initial amount of \$300.00 per unit, per year, funded monthly in twelve equal monthly installments, funded as an operating expense.
2. **APPOINTMENT OF MANAGING AGENT.** On and subject to the terms and conditions of this Agreement, Owner hereby retains Managing Agent commencing on the date of acquisition of the property (the “Commencement Date”) to manage and lease the Senior Complex described in Number 3 below, and the Agent accepts the appointment subject to the terms and conditions set forth in this agreement.

3. Name: Lurie Terrace

Location: 600 W. Huron, Ann Arbor, MI 48104

Number of Dwelling Units: 136

4. **MANAGEMENT PLAN:**

The Managing Agent has provided Owner with a Management Plan for the Senior Complex that provides a comprehensive and detailed description of the policies and procedures to be followed in the management of the Senior Complex. The Management Plan has been approved by the Owner before its implementation. In many of its provisions, this Agreement briefly defines the nature of the Managing Agent’s obligations, with the intention that reference be made to the Management Plan for more detailed policies and procedures. Accordingly, the Owner and the Managing Agent will comply with all applicable provisions of the Management Plan, regardless of whether specific reference is made thereto in any particular provision of this Agreement. The Managing Agent will continually review the Management Plan for the purpose of keeping the Owner advised for necessary or desirable changes. At least sixty (60) days before the end of the first contract year, the Managing Agent shall submit a Management Plan to the Owner for the second contract year.

5. **ON-SITE MANAGEMENT OFFICE:**

Owner shall provide adequate space in the Senior Complex for a management office, if necessary. Owner shall pay from the operating budget all expenses related to such office, including, but not limited to, furnishings, equipment, postage, office supplies, electricity, computers, telephone,

answering service, and security monitoring services, if any. All computers, hardware, software, computer upgrades and maintenance in connection therewith shall be at Owner's expense.

#### **6. PROPERTY INFORMATION:**

As soon as possible, but not more than 30 days after the commencement of this Agreement, the Owner will furnish the Managing Agent with a complete set of building plans and specifications, as well as existing maintenance contracts. Also, the Owner will provide copies of all manufacturers' preventative maintenance schedules, guarantees and warranties pertinent to the fixtures, mechanical equipment, and appliances used in the operation of the subject property.

With the aid of this information and inspection by competent personnel, the Managing Agent will become thoroughly familiar with the character, location construction, layout, plan, and operation of the Senior Complex, and especially of the electrical, heating, plumbing, air-conditioning, and ventilation systems, the elevators, and all other mechanical equipment.

#### **7. RENTALS:**

The Managing Agent will offer for rent and will rent the dwelling units in the Senior Complex. The following provisions will apply:

- a. The Managing Agent will be responsible for the initial screening of prospective residents.
- b. The Managing Agent will be responsible for all home visits.
- c. The Managing Agent will follow the resident selection policy described in the Management Plan and will show the premises to prospective tenants.
- d. The Managing Agent will prepare and verify eligibility certifications and re-certifications in accordance with the guidelines established by the Owner.

#### **8. LEASING AND OCCUPANCY:**

The Managing Agent will carry out all leasing and placement activities necessary to offer housing opportunities to all applicants in accordance with HUD guidelines as applicable.

- a. Managing Agent shall use its best efforts consistent with the standard of care set forth herein to lease apartment units, retain residents and maximize Gross Operating Revenues.
- b. Managing Agent shall sign apartment leases in its capacity as property manager hereunder. Managing Agent shall only sign leases in the form of lease approved by Owner. Managing Agent shall not enter into any lease which has a term greater than 12 months.
- c. Managing Agent shall administer any waiting list consistent with the applicable provisions of the Management Plan.
- d. Managing Agent acknowledges that 136 units in the Senior Complex are subject to a variety of requirements due to lender requirements, the nature of a designated senior units

of the property and the potential for units to benefit from Section 8 contracts. Managing Agent represents and warrants that it is familiar with the requirements of the building, lenders and other agreements entered into by the Owner. Managing Agent agrees to operate the Senior Complex in a manner which meets the Regulatory Requirements, including but not limited to the following:

- i. To cause the apartment units in the Senior Complex to be leased to suitable tenants who comply with all regulations regarding eligibility of the Senior Complex;
- ii. To obtain from all tenants in the Senior Complex the right to receive annual reports from such tenants concerning their incomes and family sizes and any other information needed to verify eligibility;
- iii. To execute a lease for any rental unit in respect of which Section 8 or other income restrictions have been allocated only upon first obtaining certification from the tenant, and such other information as may be necessary for the Managing Agent to determine that he or she satisfies the income criteria for income restricted, or subsidized housing;
- iv. To prepare for Owner's signature, and then to file in a proper manner, the annual certifications required by the provisions of any regulations or subsidy programs; and
- v. To cause the Senior Complex to be operated in a manner that complies with all other statutes, regulations and agreements which must be complied with in order for Owner to obtain subsidy payments, property tax abatements or other benefits with respect to the units in the Senior Complex.
- vi. The responsibilities and services included in this Section as part of Managing Agent's duties shall not entitle Managing Agent to any additional compensation over and above the Management Fee. Managing Agent shall not be entitled to any compensation based upon any Senior Complex financing or sale of the Senior Complex, unless Managing Agent is engaged pursuant to separate agreement approved in writing by the Investor Member of Owner to provide brokerage services in connection therewith, in which case Managing Agent's right to compensation for Senior Complex financing or sale shall be based upon such separate agreement.

## **9. SECURITY DEPOSITS:**

The Managing Agent will collect, deposit, and disburse security deposits in accordance with the terms of each resident's lease. The amount of each security deposit will be as specified in the Management Plan, which was previously approved by the Owner. The collection and disbursement of security

deposits will also be governed by applicable state and local laws. All resident security deposits will be placed in a bank account separate from all accounts and funds of the Managing Agent and/or the Owner. Said account will be established at a bank or other financial institution whose deposits are insured by the United States Government. This account will be carried in the Managing Agent's name and designated on record as Lurie Terrace Security Deposit Account. The balance of the account must at all times be equal to the total amount collected from the families then in occupancy, plus any applicable accrued interest. The Managing Agent must comply with any applicable state and local laws concerning interest payments on security deposits.

#### **10. COLLECTION OF RENTS AND OTHER RECEIPTS:**

The Managing Agent will collect when due all rents, charges, and other amounts receivable on the Owner's account in connection with the management and operation of the Senior Complex. Such receipts (except for residents' security deposits, which will be handled as specified in Subsection 9 above) will be deposited in an account, separate from all other accounts and funds, with a bank or other financial institution whose deposits are insured by an Agency of the United States Government. This account will be carried in the Managing Agent's name and designated on record as Lurie Terrace General Operating Account.

#### **11. ENFORCEMENT OF LEASES:**

The Managing Agent will use its best efforts to ensure full compliance by each resident with the terms of the lease. Voluntary compliance will be emphasized. The Managing Agent will counsel residents and make referrals to community agencies in cases of financial hardship under other circumstances deemed appropriate by the Managing Agent. In voluntary termination of tenancies should be avoided to the maximum extent consistent with the pertinent procedures prescribed in the Management Plan. The Managing Agent may lawfully terminate any tenancy when, in the Managing Agent's judgment, sufficient cause including, but not limited to, non-payment of rent, for such termination occurs under the terms of resident's lease. For this purpose, the Managing Agent is authorized to consult with legal counsel to bring actions for eviction and to execute notices to vacate and judicial pleadings incident to such actions; provided, however, the Managing Agent keeps the Owner informed of such actions and follows such instructions as the 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 out of the General Operating Account as Senior Complex expenses.

#### **11. MAINTENANCE AND REPAIR**

The Managing Agent will maintain the Senior Complex in good repair in accordance with the Management Plan and local codes and in condition at all times acceptable to the Owner. This will include, but not be 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 the Owner in addition to those contained herein. The Owner will take note of the existing condition of the units and property and subject to availability of funds, give established goals for bringing all units up to appropriate quality standards. Expenses associated with maintenance and repair will be paid out of the general operating account and will be treated as project expense.

Incident thereto, the following provisions will apply:

- a. The Managing Agent will complete preventative maintenance activities in the most cost-effective and efficient manner possible.
- b. The Managing Agent will systematically receive and investigate all service requests from residents, take such action thereon as may be justified, and will keep records of the same. Emergency requests will be received and serviced on a 24-hour basis. Serious complaints will be reported to the Owner after investigation.
- c. The Managing Agent is authorized to purchase all materials, equipment, tools, appliances, supplies, and services necessary for proper maintenance and repair.
- d. Notwithstanding any of the foregoing provisions, the prior approval of the Owner will be required for any expenditure which exceeds \$5,000 in any one instance for labor, materials, or otherwise in connection with the maintenance and repair of the Senior Complex. This limitation is not applicable for recurring expenses with the limits of the operating budget or emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any necessary service to the Senior Complex. In the latter event, the Managing Agent will inform the Owner of the facts as promptly as possible.
- e. The Owner agrees to pay Managing Agent Five percent (6%) of the gross capital cost of any construction, fire restoration, remodeling, or renovation, for services involved in managing, bidding-out, coordinating, and supervising any such work, providing such work is not funded from the regular operating budget. All such work must have the Owner's prior written approval.

## **12. UTILITIES AND SERVICES:**

In accordance with the Management Plan, the Managing Agent will make arrangements for water, electricity, gas, sewage and trash disposal, vermin extermination, decorating, laundry facilities, and telephone service. Subject to the Owner's prior approval, the Managing Agent will make such contracts as may be necessary to secure such utilities and services, acting as Managing Agent for the Owner.

## **13. EMPLOYEES:**

The Management Plan prescribes the number, qualifications, and duties of the personnel to be regularly employed in the direct management of the Senior Complex. All such personnel will be employees of the City of Ann Arbor that are assigned to the Managing Agent, with the exception of the Executive Director of the Managing Agent and will be hired, paid, supervised, and discharged through the City of Ann Arbor. Additionally, all such employees must meet all qualifications, licensing, and code requirements applicable to completing assigned task, except where provisional or probationary status is permitted by regulation. It is understood that all direct costs associated with employees working "on-site" will be borne by the owner, to include their direct salary. Social Security taxes, employment taxes, medical insurance, Pension Plan, Worker's Compensation and

housing allowance (if applicable). Such reimbursement will be paid out of the General Operating Account and will be treated as a project expense.

#### **14. DISBURSEMENTS FROM GENERAL OPERATING ACCOUNT:**

- a. From the funds collected and deposited by the Managing Agent in the General Operating Account pursuant to Section 10 above, the Managing Agent will make the following disbursements promptly when payable:
  - i. Reimbursement to the Managing Agent for compensation payable to employees specified in Section 13 above, and for the taxes and assessments payable to local, state and federal governments in connection with the employment of such personnel.
  - ii. All sums otherwise due and payable by the Owner as expenses of the Senior Complex authorized to be incurred by the Managing Agent under the terms of this Agreement, including compensation payable to the Managing Agent, pursuant to Section 26 below, for its service hereunder.
- b. Except for the disbursements mentioned in Subsection 14(a) above, funds will be disbursed or transferred from the General Operating Account only as the Owner may from time to time direct in writing.
- c. In the event the balance in the General Operating Account is at any time insufficient to pay disbursements due and payable under Subsection 14(a) above, the Managing Agent will inform the Owner of that fact and the Owner will then remit to the Managing Agent sufficient funds to cover the delinquency. In no event will the Managing Agent be required to use its own funds to pay such disbursements, or any other disbursements concerning the operation of the property.

#### **15. BUDGETS:**

Annual operating and capital budgets for the Senior Complex will be approved by the Owner. Except as permitted under Subsection 11(e) above, annual disbursements for each type of operating expenses itemized in the budget will not exceed the amount authorized by the approved budget. The Managing Agent will prepare a recommended operating and capital budget for each fiscal year beginning during the term of this Agreement, and will submit the same to the Owner at least 60 days before the beginning of the fiscal year. The Owner will promptly inform the Managing Agent of any changes incorporated in the approved budget, and the Managing Agent will keep the Owner informed of any anticipated positive or negative variance of ten percent (10%) or more for each major budget category stated in the approved budget.

#### **16. RECORDS AND REPORTS:**

In addition to any requirements specified in the Management Plan or other provisions of this Agreement, the Managing Agent will have the following responsibilities with respect to accounts and reports:

- a. The Managing Agent will establish and maintain a comprehensive system of records, books, and accounts in a manner satisfactory to the Owner. All records, books, and accounts will be subject to examination at reasonable hours by any authorized representative of the Owner.
- b. With respect to each fiscal year ending during the term of this Agreement, the Managing Agent will have the property audited in accordance with the provisions of the Single Audit Act, OMB Circular A-133 by a certified public accountant. The report will be prepared in accordance with generally accepted accounting practices, and submitted to the Owner within 60 days after the end of the fiscal year. The preparer's services will be paid for out of the General Operating Account as an expense of the Senior Complex.
- c. The Managing Agent will furnish information as may be requested by the Owner from time to time with respect to the financial, physical or operational condition of the Senior Complex.
- d. Except as otherwise provided in this Agreement, all off-site bookkeeping, clerical, and other management overhead expenses (including, but not limited to, costs of office supplies and equipment, postage, transportation for managerial personnel, and telephone services) will be borne by the Managing Agent out of its own funds and will not be treated as Senior Complex expenses.
- e. Managing Agent agrees to keep and maintain at all times all necessary books and records, or correspondence relating to the leasing, management and operation of the Senior Complex, and to prepare and render to Owner monthly itemized accounts of receipts and disbursements incurred in connection with its leasing operation and management by the twentieth (20<sup>th</sup>) day of the following month. Unless Owner, in writing, expressly directs, Managing Agent shall not be required to file any reports other than such monthly statements. An annual audit report shall be prepared at Owner's expense, out of available cash flow, showing a balance sheet and an income and expense statement, all in reasonable detail and certified by an independent Certified Public Accountant. All books, correspondence and data pertaining to the leasing, management and operation of the Senior Complex shall, at all times, be safely preserved. Such books and records, or correspondence and data shall be available to Owner at all reasonable times, and with reasonable notice to Owner of an intent to review said books and records, or correspondence and shall, upon the termination of this Agreement be delivered to Owner in their entirety and upon request of Owner be delivered to Owner within thirty (30) days of such request. Managing Agent shall maintain files of all original documents relating to reporting requirements under lender agreements or other agreements entered into by the Owner, leases, vendors and all other business of the Senior Complex in an orderly fashion at the Senior Complex, which files shall be the property of Owner and shall at all times be open to Owner's inspection.

**17. BIDS, DISCOUNTS, REBATES, OR COMMISSIONS:**



The Owner and Managing Agent agree to make every reasonable effort to obtain contract materials, supplies and services at the most advantageous cost to the property and to secure and credit to the property all discounts, rebates and commissions obtainable with respect to purchases, service contracts, and all other transactions on behalf of the Senior Complex. The Owner and Managing Agent agree that all goods and services purchased from individuals or companies having an identity-of-interest with the Owner or Managing Agent shall be purchased at costs not in excess of those that would be incurred in making arms-length purchases on the open market.

The Managing Agent shall solicit written cost estimates (i.e. bids) in the following manner:

<b>Procurement Method</b>	<b>Federal grants</b>	<b>All other funding sources</b>
Micro Purchase – direct contract	Up to \$10,000	Up to \$25,000
Small Purchase – 3 quotes	\$10,001 - \$249,999	\$25,001 - \$249,999
Sealed Bids/Proposals – Board Approval Required	\$250,000 and above	\$250,000 and above

The Managing Agent agrees to accept the bid that represents the lowest price, taking into consideration the bidders’ reputation for quality of workmanship or materials and timely performance, and the time frame within which the services or goods are needed. The Managing Agent must make every reasonable effort to assure that the Senior Complex is obtaining services, supplies, and purchases at the most advantageous cost. The Managing 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 the Managing Agent shall be made part of the Senior Complex’s records and shall be retained for three (3) years from the date the work was completed

**18. RESIDENT SERVICES PROGRAM:**

The Managing Agent will be responsible to the Owner for carrying out any resident services program described in the Management Plan. The resident services director of the Owner or other designated on-site or central office personnel will be the liaison with the Managing Agent on such matters.

**19. RESIDENT-MANAGEMENT RELATIONS:**

The Managing Agent will encourage and promote resident involvement, and will abide by HUD’s policies regarding recognition of resident bodies.

**20. INSURANCE:**

a. Managing Agent’s Insurance:

The Project will provide on behalf of the Managing Agent during the term of this Agreement the following insurance:

- i. Workers’ Compensation Insurance in the minimum statutory amounts and Employer’s Liability Insurance in the amount of \$500,000 each accident; \$500,000 each disease; and \$500,000 for each disease/each employee. The

premiums for such a bond will be paid from both the Managing Agent's management fee and from property income, to be pro-rated proportionately to the persons covered. Specifically, coverage for the Managing Agent, including all applicable persons in the central office, will be paid from management fees, and coverage for the Owner personnel, if applicable, will be paid from the Senior Complex's income.

- ii. Automobile Liability Insurance (covering all owned, hired and non-owned vehicles with personal and property protection insurance including residual liability insurance under Michigan No Fault Insurance Law) in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
- iii. Professional Liability Insurance in an amount of \$1,000,000.
- iv. General Liability Insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 aggregate.
- v. A crime insurance policy including insuring agreement for employee dishonest, forgery and alteration, theft, disappearance & destruction, and robbery and safe burglary. Limits of liability for each insuring agreement shall not be less than \$100,000, with a maximum deductible of \$1,000 per claim, and the cost of this coverage shall be allocated as described in Section 18 of this Agreement.

The General Liability Insurance policy shall name the Owner, the Investor and all Project Lenders as additional insureds. The General Liability Insurance shall provide blanket contractual liability insurance for all written contracts or, in the alternative, shall contain a specific endorsement worded substantially as follows:

If the General Liability Insurance policy does not contain the standard ISO (Insurance Services Office) wording of "definition of insured" which reads essentially as follows: "the insurance afforded applies separately to each insured except with respect to limits," then in the alternative, the General Liability Insurance policy shall contain the following cross liability endorsement: "It is agreed that the inclusion of more than one insured under this policy shall not affect the rights of an insured with respect to any claim, suit or judgment made or brought by or for any other insured or for any employee of any other insured. This policy shall protect each insured in the same manner as though a separate policy had been issued to each, except nothing herein shall operate to increase the insurer's liability beyond the amount or amounts for which the insurer would have been liable had only one insured been named."

If during the term of this Agreement, changed conditions or other pertinent factors should, in the reasonable judgment of the Owner, render inadequate the insurance limits or types of coverage, the Managing Agent shall furnish or demand from its insurer such additional coverage as may reasonably be required under the circumstances. All such insurance shall be procured at the Managing Agent's expense under valid and enforceable policies, issued by insurers of recognized responsibility, which are well-rated by national

rating organizations and are acceptable to the Owner. Each policy shall be from an insurance company rated "A" or higher by the A.M. Best Insurance Guide, with a financial size category rating of 12 or higher.

All policies shall name the Managing Agent as the insured and shall be accompanied by a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the Owner, Investor and all Project Lenders. Certificate(s) of Insurance evidencing such coverage shall be submitted to all additional insured prior to the commencement of performances under this Agreement and at least fifteen (15) days prior to the expiration dates of expiring policies.

If any work is sublet in connection with this Agreement, such subletting to be approved by Owner only in the event that the amount of the contract for the sublet work exceeds \$20,000, the Managing Agent shall require each Subcontractor to effect and maintain the types and limits of insurance as requested by the Owner and shall require documentation of same, copies of which documentation shall be promptly furnished to the Owner.

Other than the cost for worker's compensation insurance, the Managing Agent shall pay without any right of reimbursement all costs of maintaining the insurance required under this Section.

b. Owner's Insurance

It is understood and agreed that the Owner will maintain separate Senior Complex Insurance and General Owner's Liability Insurance coverage for the Senior Complex. The Managing Agent will investigate and furnish the Owner with full reports as to all accidents, claims, and potential claims for damage relating to the Senior Complex and will cooperate with the Owner's insurers in connection therewith.

The Owner will inform the Managing Agent of insurance to be carried with respect to the Senior Complex and its operations, and the Managing Agent will solicit quotes and, after approval from the Owner, cause such insurance to be placed and kept in effect at all times. The Managing Agent will pay premiums out of the General Operating Account, and the premiums will be treated as operating expenses. All insurance will be placed with such companies, on such conditions, in such amounts and with such beneficial interests appearing thereon as shall be acceptable to the owner and Managing agent, provide that the same will include public liability coverage, with the Managing Agent designated as one of the additional insured, in amounts acceptable to the Managing Agent and the Owner. The Managing Agent will promptly report to the insurance company all accidents, claims, and potential claims for damage relating to the property, and will cooperate with the Owner's insurers in connection therewith. The Managing Agent will request the insurance company to furnish an annual report to the Agent and Owner listing all claims paid or reserved for payment.

All such insurance policies shall provide that notice of default or cancellation be sent to Owner as well as Managing Agent, at least 30 days in advance of the effective date of any such default or cancellation.

Each policy shall be endorsed to include the provision giving the Owner at least thirty (30) days prior written notice of cancellation, non-renewal or material change of the policy. The Commercial General Liability insurance policy shall be endorsed to include the Managing Agent as additional insured. Managing Agent shall furnish Owner with copies of all such endorsements with Certificates of Insurance evidencing such policies and the renewals thereof. Owner shall further have the right to receive full copies of the insurance policies for its review.

c. Waiver of Subrogation

Managing Agent hereby waives any and all rights of recovery against Owner, its officers, agents, partners and employees occurring out of the ownership, management and operation of the Senior Complex for loss or damage as a result of any casualty covered and to the extent covered by its insurance policies. The Managing Agent shall upon obtaining the policies of insurance required by this Section notify the insurance carrier that the foregoing waiver is contained in this Agreement and shall require such carrier to include and appropriate waiver of subrogation provision in the insurance policies.

**21. COMPLIANCE WITH GOVERNMENTAL ORDERS:**

The Managing Agent will take such action as may be necessary to comply promptly with any and all governmental orders or other requirements affecting the Senior Complex, whether imposed by federal, state, county, or municipal authority, subject, however, to the limitation stated in Subsection 11(e) with respect to repairs. Nevertheless, the Managing Agent shall take no such action so long as the Owner is contesting, or has affirmed its intention to contest, any such order or requirement. The Managing Agent will notify the Owner in writing all notices of such orders or other requirements within 72 hours from the time of their receipt.

Managing Agent shall promptly notify Owner in writing of the receipt or service of any demand, notice or legal process upon Managing Agent (although Managing Agent is not authorized to accept service of process on behalf of Owner), or the occurrence of any casualty loss, injury or damage on or about the Senior Complex.

Managing Agent shall fully comply and cause its employees to fully comply with all applicable laws in connection with this Agreement and the performances of its obligations hereunder, including all federal, state and local laws, ordinances and regulations relative to the leasing, use, operation, repair and maintenance of the Senior Complex and the operations of Managing Agent, including without limitation, laws prohibiting discrimination in housing, employment laws (including those related to unfair labor practices), laws regarding tenant security deposits and laws regarding the storage, release and disposal of hazardous materials and toxic substances, including without limitation, asbestos, petroleum and petroleum products.

Managing Agent agrees that it shall not, and shall cause its employees to not, cause any hazardous materials or toxic substances to be stored, released or disposed of on or in the Senior Complex except as may be incidental to the operation of any apartment project (e.g., cleaning supplies, fertilizers, paint, pool supplies and chemicals) and then only in complete compliance with all applicable laws and regulations and in conformity with good property management. If (i) there is a violation of applicable laws regarding the storage, release and disposal of such hazardous materials, or toxic substances, or (ii) Managing Agent reasonably believes that the storage, release or disposal of any hazardous material, petroleum product, or toxic substances, could cause liability to the Owner, including any releases caused by tenants, third parties or employees, on the Senior Complex, Managing Agent shall notify Owner immediately.

## **22. NON-DISCRIMINATION:**

In the performance of its obligations under this Agreement, the Managing Agent will comply with the provisions of any federal, state or local law prohibiting discrimination in housing on the grounds of race, color, religion, sex, age, marital or familial status, national origin, or disability. The Managing Agent agrees that the Senior Complex shall be offered to all prospective tenants on a non-discriminatory basis without regard to race, color, religion, sex, family status, handicap or national origin in accordance with applicable law.

## **23. STATUS OF MANAGING AGENT:**

In the performance of its duties hereunder, the Managing Agent shall be and act as an independent contractor, with the sole duty to supervise, manage, operate, control and direct performance of the details of its duties incident to the specified duties and obligations hereunder, subject to the rights of the Owner, as described herein. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, employment relationship, or otherwise to create any liability for one party with respect to indebtedness, liabilities or obligations of the other party except as otherwise may be expressly set forth herein

- a. Standard of Care. Managing Agent shall perform its duties and obligations in a professional, competent, businesslike and efficient manner as would a first class property manager of apartment projects similar to the Senior Complex.

## **24. MANAGING AGENT'S COMPENSATION:**

Subject to Section 34 hereof, the Managing Agent will be compensated for its services under this Agreement by monthly fees to be paid out of the General Operating Account and treated as Senior Complex expenses. Such fees will be payable on the first day of each month for the term of this Agreement.

- a. In consideration of the performance by Managing Agent of its duties and obligations hereunder, Owner shall pay to Managing Agent a management fee ("Management Fee") equal to 6% of Gross Operating Revenues, which fee is calculated with respect to the preceding calendar month and payable on the tenth of each calendar month. Managing Agent shall submit to Owner an invoice detailing the calculation of the Management Fee each month, no later than the fifth day of the next succeeding month. If the first or last

month of this Agreement is not a complete calendar month, the Management Fee for such month shall be calculated on the basis of Gross Operating Revenues for the entire month, and the amount payable for such month shall then be prorated based on the number of days during such month that this Agreement was in effect.

## **25. TERMS OF AGREEMENT:**

This Agreement shall commence on the Commencement Date and shall expire on the date thirty-six months from the Commencement Date (the “Original Term”). The term will be automatically renewed at the end of the Original Term or any later Renewal Term (each term after the Original Term being referred to herein as a Renewal Term) for an additional one year, unless terminated in accordance with the provisions of this Section. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, subject to the following:

- a. This Agreement may be terminated by either the Owner and/or Managing Agent as of the end of a calendar month provided that at least 90 days advance written notice thereof is given to the other party in the event that a petition in bankruptcy is filed by or against either the Owner or Managing Agent, or in the event that either makes an assignment for the benefit of creditors to take advantage of any insolvency act, the other party may terminate this Agreement as provided for in “a” above.
- b. Upon termination, the Managing Agent will submit to the Owner any financial statements required and, after the Owner and Managing Agent have accounted to each other with respect to all matters outstanding as of the date of termination, the Owner will furnish the Managing Agent security in form and principal amount satisfactory to the Managing Agent against any obligations or liabilities that the Managing Agent may properly have incurred on behalf of the Owner hereunder. All of the Senior Complex’s cash trust accounts, investments, and records will be turned over to the Owner within 30 days of the date the Management Agreement is terminated.
- c. Termination for Cause: The Owner shall have the right to terminate this Agreement immediately if it determines in its sole discretion that the Managing Agent’s performance of this Agreement or the activities of the Managing Agent or its employees are so unsatisfactory or improper as to constitute a hazard to the occupants of the Senior Complex, a threat to the continued viability or safety of the buildings, or the Owner.

## **26. REPRESENTATIONS OF MANAGING AGENT**

The Managing Agent represents, warrants, covenants and agrees that:

- a. It has the authority to enter into and to perform this Agreement, to execute and deliver all documents relating to this Agreement, and to incur the obligations provided for in this Agreement;
- b. When executed, this Agreement, together with all documents executed pursuant hereto, shall constitute the valid and legally binding obligations of the Managing Agent in accordance with its terms;

- c. The Managing Agent has all necessary licenses, consents and permissions to enter into this Agreement, manage the Senior Complex, and otherwise comply with and perform Managing Agent's obligations and duties hereunder. Managing Agent shall comply with any conditions or requirements set out in any such licenses, consents and permissions, and shall at all times operate and manage the Senior Complex in accordance with such conditions and requirements;
- d. The Senior Complex shall be managed in a manner to satisfy all applicable restrictions, including, but not limited to tenant income and rent restrictions, applicable to the project;
- e. The Managing Agent shall comply with any requirements under applicable environmental laws, regulations and orders which affect the Senior Complex;
- f. The Managing Agent shall cause the Senior Complex to be operated in a manner so that all requirements shall be met which are necessary to obtain or achieve (i) compliance with the requirements of lenders and all other agreements executed by the Owner, and (iii) issuance of all necessary governmental approvals required to permit occupancy of all of the apartment units in the Senior Complex; and
- g. The Managing Agent shall familiarize itself with the loan documents and comply with the reserve requirements.

## **27. REPRESENTATIONS OF OWNER.**

The Owner represents and warrants that:

- a. The Owner has the authority to enter into and to perform this Agreement, to execute and deliver all documents relating to this Agreement, and to incur the obligations provided for in this Agreement; and
- b. When executed, this Agreement, together with all documents executed pursuant hereto, shall constitute the valid and legally binding obligations of the Owner in accordance with its terms.

## **28. INDEMNIFICATION:**

Notwithstanding any provision of this Agreement for any obligation of Managing Agent hereunder, it is understood and agreed:

- a. That the Owner has assumed and will maintain its responsibility and obligation through the term of this agreement for the finances and the financial stability of the Senior Complex, and
- b. That the Managing Agent shall have no obligation, responsibility or liability to fund authorized Senior Complex costs, expenses, or accounts other than those funds generated by the Senior Complex itself or provided to the property or provided to the Senior Complex or to the Managing Agent by the Owner.

In accordance with the foregoing, the Owner agrees that the Managing Agent shall have the right at all times to secure payment of its compensation, as provided for under Section 26 of this Agreement, from the General Operating Account, immediately when such compensation is due and without regard to other Property obligations or expenses, provided the Managing Agent has satisfactorily discharged all duties and responsibilities under this Agreement. Moreover, the Owner hereby indemnifies the Managing Agent and agrees to hold it harmless with respect to Senior Complex costs, expenses, accounts, liabilities, and obligations during the term of the Agreement, and further agrees to guarantee to the managing agent the payment of its compensation under section 26 of this Agreement during the term of this Agreement to the extent that the Senior Complex's Operating and Maintenance Account is insufficiently funded for this purpose. Failure of the Owner at any time to abide by and to fulfill the foregoing shall be breach of this Agreement entitling the Managing Agent to obtain from the Owner, upon demand, full payment of all compensation owed to the Managing Agent through the date of such a breach.

- c. Indemnification of Owner. The Managing Agent shall indemnify, protect, defend (with legal counsel approved by Owner) and hold harmless Owner and Owner's partners, together with their respective officers, directors, agents, employees and affiliates (collectively "Indemnitees") from and against any and all claims, demands, actions, liabilities, losses, costs, expenses, damages, penalties, interest, fines, injuries and obligations, including reasonable attorneys' fees, court costs and litigate on expenses ("Claims") incurred by any indemnitee as a result of (a) any act by Managing Agent (or any officer, agent, employee or contractor of Managing Agent) outside of the scope of Managing Agent's authority hereunder, (b) any act or failure to act by Managing Agent (or any officer, agent, employee or contractor of Managing Agent) constituting negligence, misconduct, fraud or breach of this Agreement, other than as covered by Owner's insurance (for negligence or misconduct only) and to the extent Owner's insurance is available, (c) Claims made by current or former employees or applicants for employment arising from hiring, supervising or firing same, or (d) any act or omission by Managing Agent, its employees, officers, agents or contractors in violation of any applicable law. If at any time during the course of such defense Managing Agent determines, in its reasonable judgment, that such Claim results from an event, action or no action for which the Owner is not entitled to indemnification hereunder, Managing Agent shall automatically be entitled to immediate reimbursement for all losses, costs and expenses incurred on behalf of itself and of Managing Agent incurred to the date of such determination.
- d. Indemnification of Managing Agent by Owner. To the extent of available insurance proceeds, Owner shall indemnify, protect, defend and hold harmless Managing Agent from and against any and all Claims incurred by Managing Agent resulting from performances of its obligations under this Agreement, except that this indemnification shall not apply with respect to any Claims (a) resulting from any act by Managing Agent outside of the scope of Managing Agent's authority hereunder, (b) resulting from any act or failure to act constituting negligence, misconduct, fraud or breach of this Agreement,





All Notices shall be effective upon such personal delivery, upon being deposited with overnight mail carriers or the United States mail or upon facsimile transmission as required above. However, with respect to Notices so deposited with overnight mail carriers or the United States mail, the time period in which a response to any such notice, demand or request must be given shall commence to run from the next business day following any such deposit with Federal Express or Airborne, in the case of a deposit in the United States mail as provided above, the date on the return receipt of the Notice reflecting the date of deliver or rejection of the same by the addressee thereof. By giving to the other parties hereto at least 15 days written notice in accordance with the provisions hereof, a party may change its address for notice purposes.

**31. SECTION 3 REQUIREMENTS:**

The Managing Agent is required to comply with Section 3 of the U.S. Housing Act of 1937, as amended, when and if required by federal funding sources.

**32. INTERPRETATIVE PROVISIONS:**

- a. At all times, this Agreement will ensure to the benefit of and constitute a binding obligation upon the Owner and Managing Agent and their respective successors and assigns.
- b. This Agreement constitutes the entire Agreement between the Owner and the Managing Agent with respect to the management and operation of the Senior Complex, and no change will be valid unless made by supplemental written Agreement.
- c. This Agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.
- d. If any provision of this Agreement or the application thereof is held to be invalid or unenforceable, such defect shall not affect other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications of this Agreement shall be severable.

**[SIGNATURE PAGE TO FOLLOW]**

IN WITNESS THEREOF, the Owner and Managing Agent (by their duly authorized officers) have executed this Agreement on the date first above written.

**MANAGING AGENT:  
ANN ARBOR HOUSING COMMISSION**

By: \_\_\_\_\_  
Jennifer Hall  
Executive Director

Date: \_\_\_\_\_, 2020

**OWNER:  
ANN ARBOR AFFORDABLE HOUSING CORPORATION**

By: \_\_\_\_\_  
Jennifer Hall  
Secretary/Treasurer

Date: \_\_\_\_\_, 2020

