

**REQUEST FOR PROPOSALS**  
**FOR**  
**MANAGEMENT SERVICES**  
**HOUSING COMMISSION OF THE CITY OF HIGHLAND PARK, ILLINOIS**

**JULY 19, 2019**

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## 1. OBJECTIVES

Through this Request for Proposals ("RFP"), the Housing Commission of the City of Highland Park, Illinois, requests proposals from qualified firms to manage three rental developments subsidized under the Federal Section 8 Program ("Services"). The developments include a total of 153 units, 124 of which are for seniors and persons with disabilities, and 29 of which are for families.

The selected proposer ("Consultant") will be invited to enter into a professional services agreement with the Housing Commission of the City of Highland Park ("Agreement"), in a form provided by the Housing Commission and generally consistent with the agreement attached as Attachment A to this RFP, as well as binding Management Agreements with the Housing Commission for each development. The Housing Commission and the Highland Park City Council have the ultimate authority to approve any proposal and to authorize the execution of an Agreement.

## 2. TIMELINE

City issues RFP:	7/19/2019
Deadline for questions:	8/8/2019
Q&A posted:	8/15/2019
Proposals due:	9/13/2019, 4:00 PM
Notification of Finalists/ Interviews:	Week of 9/23/2019
Contract Award:	October 2019
Start Project:	December 1, 2019

## 3. BACKGROUND

The Highland Park Housing Commission was created in 1973 to encourage and engage in the development of low-and moderate-income housing. Currently, the Commission operates rental housing in four affordable developments and maintains a waiting list for condominium units in an affordable senior development. The Housing Commission consists of seven members, all of whom are appointed by the City Mayor with the consent of the City Council. An additional member is a non-voting ex officio representative of the City Council. The firm selected to provide the Services will work closely with the Housing Commission and City Staff to manage the developments, which are as follows:

- **Frank B. Peers Housing.** Located at 400 Central Avenue, the building was completed in 1978 and includes 62 one-bedroom and 6 efficiency apartments for seniors and persons with disabilities. A one-story addition was completed in 1999, creating additional common space, offices, and a

warming kitchen. The building is owned by the Peers Housing Association, of which the Housing Commission is the sole member. The underlying land is leased from the City of Highland Park. The initial lease term expires on August 24, 2021, but has been extended for a period of 50 years, commencing August 25, 2021, and expiring August 24, 2071. The mortgage is provided by the Illinois Housing Development Authority (IHDA) and was refinanced in November 2005. The Section 8 Housing Assistance Payments (HAP) contract for all units expires January 1, 2038.

- **Walnut Place.** Located at 654 Walnut, the development, consisting of three buildings, was completed in 1980. It includes 56 one-bedroom apartments for seniors and persons with disabilities, 8 two-bedroom townhouses and 4 three-bedroom townhouses for families. The development is privately owned by an Illinois partnership, Highland Park Apartment Association. Pursuant to an Operating Agreement between the owner and the Housing Commission, the Commission serves as the owner's agent for managing and operating the development. The mortgage is provided by IHDA and was refinanced in November 2005. The Section 8 HAP contract for all units expires on September 1, 2020.
- **Ravinia Housing.** This scattered site family development, consisting of 6 buildings in two locations, was completed in 1983. There are 10 three-bedroom townhouses located at 735-763 Pleasant Avenue, and 7 units located at 2743-2755 St. Johns Ave. consisting of 1 three-bedroom home, 1 four-bedroom home, and 5 three-bedroom townhouses. The development is owned by the Ravinia Housing Association, of which the Housing Commission is the sole member. The project's mortgage was restructured in 2012 under HUD's Mark-to-Market Program. The Section 8 HAP contract for all units expires January 31, 2032.

#### 4. SCOPE OF WORK

The Housing Commission requires that the Services be provided by a firm with seasoned management experience, sensitivity to the special needs of the elderly and family populations that reside in the developments, experience in managing HUD- and IHDA-financed projects, and a proven track record of managing project-based Section 8 elderly and family housing.

Upon completion of the RFP process, the selected management firm will be expected to enter into a binding Management Agreement with the Housing Commission for each development. The contracts will be for the term of two years, with options to renew for an additional two-year term.

The Management Agreement for Frank B. Peers Housing and Walnut Place will follow the format and include the contractual terms as specified in the form Management Agreement attached hereto as Attachment B. The Management Agreement for Ravinia Housing will follow the requirements specified in *HUD Handbook 4381.5, The Management Agent Handbook, Chapter 2, Section 2.17*, a copy of which is attached hereto as Attachment C. Any substantial revisions to the form contract requested by the proposer must be specified in the response to the RFP.

A Management Plan will be attached to and incorporated by reference into the Management Agreements for each of the three developments. The outline of the Management Plan required by IHDA is attached

hereto as Attachment D. The Management Plan will be subject to negotiation with the Housing Commission.

The Housing Commission places a high priority on addressing the social service needs of its residents. At a minimum, the Housing Commission requires that there be a management presence in the office in both the Frank B. Peers and Walnut Place buildings for at least some time each day during the work week. The current requirements for on-site staff for the three developments combined are as follows:

- On-Site Manager – 35 hours per week
- Assistant Manager – 40 hours per week
- Resident Services Director – 30 hours per week
- Two Maintenance Engineers/Janitors – Each at 40 hours per week

## **5. SUBMITTAL REQUIREMENTS**

Submittals should include six hard copies and one electronic copy in PDF format submitted on a thumb drive to the following address:

**Attention: Charmain Later, Senior Planner  
Community Development Department-Public Services Building  
City of Highland Park  
1150 Half Day Road  
Highland Park, IL 60035**

**Proposals are due on or before 4:00 PM on 9/13/2019**

Failure to submit six hard copies and thumb drive to the City by the due date specified above may be deemed to be non-responsive and may result in disqualification from the RFP process. Specify “Management Services RFP” on the exterior of the envelope. Proposals will not be opened publicly. Proposals submitted after due date and time will be returned unopened. No oral, telephone, email, or fax proposals will be considered.

The following should be included in the proposal, in the order listed below:

### **A. Overview of the Firm, Approach to Work & Readiness**

1. Provide a brief overview of your firm, including the location of your principal office, number of branch locations, designated business hours, years of industry experience, number of full-time and part-time employees, etc. Describe any significant change in organizational structure, ownership or management during the past three years, and any regulatory action taken by any oversight body against the organization or local office in the past five years. Include an organizational chart, along with key personnel qualifications.

2. Describe ability to perform the Services effectively and efficiently in accordance with the requirement of City, State and Federal code/regulations. Describe past performance in providing similar services in terms of type, scope and complexity, including a brief summary of project-based Section 8 development experience, and experience managing projects with low/moderate income seniors and families.
3. Summary of overall approach to the assigned work and understanding of the scope of services needed. Include a description of your business practices, policies for recruitment of personnel and conducting background checks, and ability to maintain a successful working relationship with your clients and their customers.
4. Describe the firm's management, supervision, maintenance, and social service staffing policies. The proposal should indicate how the firm will address the requirement to ensure a daily management presence in the Peers and Walnut buildings, and indicate what staff will be on-site.
5. Describe the firm's policies and procedures for various management tasks, including tenant selection and screening, rent collection and delinquencies, tenant relations (including orientation, re-certification, and complaints), maintenance and repairs, emergencies, and accounting and reporting. Indicate what maintenance repairs are handled by firm staff and what repairs are contracted out.
6. Indicate what training is provided to staff, how often training is required, and provide a listing of related management certifications held.
7. Describe of the types of social services that will be provided to residents. Please indicate the project-based Section 8 developments in which you provide social services to your residents within the parameters of IHDA and/or HUD regulations, describe the services provided, and describe the on-site staffing for such services and how such staffing is funded.
8. Describe how the firm intends to ensure maximum occupancy of rental units, as well as how the firm will manage the waitlist for units, what staff will have access to waitlists, and any software or tools used.
9. Describe the firm's standard financial bookkeeping/accounting and reporting software and version used, as well as software used for occupancy reporting. Indicate who is responsible for the bookkeeping and reporting. Attach a sample of standard monthly financial report and occupancy report from a similar project. Attach the most recent financial statement for your firm, audited if available.
10. Describe the quality control/assurance activities the firm will conduct to ensure all applicable audits and inspections meet or exceed acceptable standards.

11. Describe the readiness and ability of your firm to provide the services requested. Include schedule for transition, if any, necessary for your firm to take on this work.

**B. References and Summary of Properties Managed**

1. Provide at least three general client references that may be contacted for verification of the experience and qualifications indicated in the proposal.
2. Provide a list of all the Section 8 and other government subsidized rental properties (including properties which may be only partly subsidized) currently managed by your firm in Illinois and any such properties managed at any time in the past five years in Illinois. If there is a property that is or was problematic, do not exclude it. Please provide a footnote explaining the problem and how it was resolved. Provide the following information for each property:
  - i. The address and project name (if applicable)
  - ii. The government program used to finance the project
  - iii. The number of buildings and how many separate structures are involved in the project
  - iv. The total number of units and the number of subsidized units
  - v. Whether the project is for elderly or families or both
  - vi. The date the firm started managing the project and the date management ended if the firm no longer manages the property
  - vii. The property owner(s) name, address, and phone number
  - viii. The social services provided by management staff
  - ix. If there is a property that was or is problematic, please explain the problem and how it was resolved
  - x. Whether your management firm has any ownership interest in the project
  - xi. Latest Real Estate Assessment Center (REAC) and Management and Occupancy Review (MOR) scores
  - xii. Alternatively, provide HUD Previous Participation Certification (Form HUD-2530)
3. Provide a separate list of non-Section 8/non-subsidized rental properties in Illinois currently managed by your firm, and managed within the past five years. For each such property, please provide the following information:
  - i. The address and project name (if applicable).
  - ii. The number of buildings and how many separate structures are involved in the project.
  - iii. The total number of units
  - iv. Whether the project is for elderly or families or both

- v. The date the firm started managing the project and the date management ended if the firm no longer manages the property
- vi. The property owner(s) name, address, and phone number
- vii. The social services provided by management staff. If there is a property that was or is problematic, please explain the problem and how it was resolved. Whether your management firm has any ownership interest in the project

**C. Other Information**

Provide any other relevant information that the proposer would like to include.

**D. Alternative Scope of Work**

Proposers may suggest changes to the scope of work based on the firm's understanding of the proposed work, past experience, and professional expertise. The Housing Commission is open to ideas that align with contemporary best practices and emerging innovation.

**E. Pricing**

- 1. Names of additional consulting and/or sub-contractor firms you may hire to supplement your firm's services.
- 2. Please complete the Management Fee Bid Form attached hereto as Attachment E. Include all fees the firm intends to charge and any salaries you intend to charge to the project.

Proposers are encouraged to register with Charmain Later, Senior Planner and Kathryn Haedo-Keller, Housing Program Analyst, by emailing their contact information to [clater@cityhpil.com](mailto:clater@cityhpil.com) and [khaedo-keller@cityhpil.com](mailto:khaedo-keller@cityhpil.com).

All questions regarding the RFP shall be directed in writing to Charmain Later at [clater@cityhpil.com](mailto:clater@cityhpil.com) and Kathryn Haedo-Keller at [khaedo-keller@cityhpil.com](mailto:khaedo-keller@cityhpil.com). All questions and responses will be compiled and submitted to all respondents electronically who have registered in one general response memorandum and posted on the City's website by the date specified in Section 2 of this RFP.

**6. PROFESSIONAL SERVICES SELECTION CRITERIA**

A working group of the Housing Commission will review all proposals submitted. Such review may entail discussions with property owners who have worked with your firm, calling the administering agency's Project Manager for some of the projects managed by your firm, references, visiting sites in your current portfolio and talking with residents. The working group may also request the most recent Management



Reviews for some of the projects managed by your firm. The working group will select up to three finalists. Finalists may request to tour properties upon selection. Interviews with the finalists may be scheduled with a panel that will include representatives of the Housing Commission and City staff. The final selection will be subject to the approval of the Housing Commission and City Council.

The Housing Commission intends to select the firm that presents the best combination of experience, capacity, and sensitivity to the needs of its Section 8 residents. The following criteria will be used to evaluate applicants:

- Experience in managing project-based Section 8 properties
- Experience in addressing social service needs of Section 8 residents
- Evidence of quality performance
- Credentials of personnel proposed to be assigned
- Proposed Management Plan
- Proposed Management Fee

## **7. TERMS AND CONDITIONS**

- A. The Housing Commission of the City of Highland Park reserves the right, at its sole discretion, to terminate this process at any time, or reject any and all proposals without penalty, prior to the execution of the Agreement. Following the review by the Housing Commission, the final selection, if any, will be based on the proposal which best meets the requirements set forth in the RFP and is in the best interest of the Parties.
- B. The Housing Commission of the City of Highland Park reserves the right to award the contract to the next most qualified firm if the successful firm does not execute a contract within 60 days after the award of the proposal, or if approval of management firm is not obtained by regulatory agencies such as the Illinois Housing Development Authority (IHDA) and the Department of Housing and Urban Development (HUD).
- C. The Housing Commission of the City of Highland Park reserves the right to request clarification of information submitted and to request additional information of one or more proposers.
- D. Any proposal may be withdrawn up until the date and time set above for the opening of proposals by written request to the Housing Commission of the City of Highland Park. Any proposals not so withdrawn shall constitute an irrevocable offer, for a period of 90 days, to provide the Services to the Housing Commission, or until one or more of the proposals have been approved by the Housing Commission, whichever occurs first.
- E. Any agreement or contract resulting from the acceptance of a proposal shall be on forms supplied or approved by the Housing Commission. The Housing Commission reserves the right to reject any agreement that does not conform to the request for proposal and the City's requirements for agreements and contracts.
- F. Proposals submitted are offers only, and the decision to accept or reject is a function of quality, reliability, capability, reputation, and expertise of the firms submitting proposals.

Issuance of this RFP does not obligate the City or Housing Commission to pay any costs incurred by a respondent in its submission of a proposal or making any necessary studies or designs for the preparation of that proposal, or for procuring or contracting for the services to be furnished under this RFP.

- G. The Housing Commission reserves the right to accept the proposal that is, in its judgment, the best and most favorable to the interests of the Commission and to the public; to reject the low price proposal; to accept any item of any proposal; to reject any and all proposals; and to waive irregularities and informalities in any proposal submitted or in the RFP process; provided, however, that the waiver of any prior defect or informality shall not be considered a waiver of any future or similar defect or informality. Firms should not rely upon, or anticipate, such waivers in submitting their proposal.
- H. The Housing Commission reserves the right to retain all proposals submitted and use any idea in a proposal regardless of whether the proposal is selected.

**HOUSING COMMISSION OF THE CITY OF HIGHLAND PARK  
PROFESSIONAL SERVICES AGREEMENT**

This **PROFESSIONAL SERVICES AGREEMENT** ("**Agreement**") is dated as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and is by and between the **HOUSING COMMISSION OF THE CITY OF HIGHLAND PARK**, an Illinois home rule municipal corporation ("**Commission**"), and the Consultant identified in Section 1.A of this Agreement.

**IN CONSIDERATION OF** the recitals and the mutual covenants and agreements set forth in this Agreement, and pursuant to the Commission's statutory and home rule powers, the parties agree as follows:

**SECTION 1.      CONSULTANT.**

**A.    Engagement of Consultant.** The Commission desires to engage the Consultant identified below to perform and to provide all necessary professional consulting services to perform the work in connection with the project identified below:

**Consultant Name ("*Consultant*"):** \_\_\_\_\_

**Address:** \_\_\_\_\_

Street

\_\_\_\_\_  
City           State           Zip

**Telephone No.:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Project Name/Description:** \_\_\_\_\_

**Agreement Amount:** The monthly fee for management services will be a sum equal to \_\_\_\_ percent of the gross collections, as defined in the Management Agreement.

**B.    Project Description.** [*Insert 25-50 word overview description of the professional services being provided*], as more fully described in the proposal attached to this Agreement as **Exhibit A ("*Proposal*")**.

**C.    Representations of Consultant.** The Consultant represents that it is financially solvent, has the necessary financial resources, and is sufficiently

experienced and competent to perform and complete the consulting services that are set forth in the Proposal ("**Services**") in a manner consistent with the standards of professional practice by recognized consulting firms providing services of a similar nature.

## **SECTION 2. SCOPE OF SERVICES.**

**A. Retention of the Consultant.** The Commission retains the Consultant to perform, and the Consultant agrees to perform, the Services.

**B. Services.** The Consultant shall provide the Services pursuant to the terms and conditions of this Agreement.

**C. Commencement; Time of Performance.** The Consultant shall commence the Services immediately upon receipt of written notice from the Commission that this Agreement has been fully executed by the Parties ("**Commencement Date**"). The Consultant shall diligently and continuously prosecute the Services until the completion of the Services or upon the termination of this Agreement by the Commission, but in no event later than the date that is \_\_\_ days after the Commencement Date ("**Time of Performance**"). The Commission may modify the Time of Performance at any time upon 15 days prior written notice to the Consultant. Delays caused by the Commission shall extend the Time of Performance in equal proportion to the delay caused by the Commission; provided, however, that the Consultant shall be responsible for completion of all work within the Time of Performance, notwithstanding any strike or other work stoppage by employees of either Consultant or of the Commission.

**D. Reporting.** The Consultant shall regularly report to the Housing Commission, or designee, regarding the progress of the Services during the term of this Agreement.

## **SECTION 3. COMPENSATION AND METHOD OF PAYMENT.**

**A. Agreement Amount.** The total amount paid by the Commission for the Services pursuant to this Agreement shall not exceed the amount identified as the Agreement Amount in Section 1.A of this Agreement. No claim for additional compensation shall be valid unless made in accordance with Sections 3.D or 3.E of this Agreement.

**B. Payment.** The Consultant shall be compensated for services pursuant to the terms and conditions of the Management Agreement for each development project.

C. **Records.** The Consultant shall maintain records showing actual time devoted and costs incurred, and shall permit the Commission to inspect and audit all data and records of the Consultant for work done pursuant to this Agreement. The records shall be made available to the Commission at reasonable times during the term of this Agreement, and for one year after the termination of this Agreement.

D. **Claim In Addition To Agreement Amount.**

1. The Consultant shall provide written notice to the Commission of any claim for additional compensation as a result of action taken by the Commission, within 15 days after the occurrence of such action.

2. The Consultant acknowledges and agrees that: (a) the provision of written notice pursuant to Section 3.D.1 of this Agreement shall not be deemed or interpreted as entitling the Consultant to any additional compensation; and (b) any changes in the Agreement Amount shall be valid only upon written amendment pursuant to Section 8.A of this Agreement.

3. Regardless of the decision of the Commission relative to a claim submitted by the Consultant, the Consultant shall proceed with all of the work required to complete the Services under this Agreement, as determined by the Commission, without interruption.

E. **Additional Services.** The Consultant acknowledges and agrees that the Commission shall not be liable for any costs incurred by the Consultant in connection with any services provided by the Consultant that are outside the scope of this Agreement ("***Additional Services***"), regardless of whether such Additional Services are requested or directed by the Commission, except upon the prior written consent of the Commission.

F. **Taxes, Benefits, and Royalties.** Each payment by the Commission to the Consultant includes all applicable federal, state, and City taxes of every kind and nature applicable to the Services, as well as all taxes, contributions, and premiums for unemployment insurance, old age or retirement benefits, pensions, annuities, or similar benefits, and all costs, royalties, and fees arising from the use on, or the incorporation into, the Services, of patented or copyrighted equipment, materials, supplies, tools, appliances, devices, processes, or inventions. All claims or rights to claim additional compensation by reason of the payment of any such tax, contribution, premium, cost, royalty, or fee are hereby waived and released by the Consultant.

G. **Final Acceptance.** The Services, or, if the Services are to be performed in separate phases, each phase of the Services, shall be considered

complete on the date of final written acceptance by the Commission of the Services or each phase of the Services, as the case may be, which acceptance shall not be unreasonably withheld or delayed.

#### **SECTION 4. PERSONNEL; SUBCONTRACTORS.**

**A. Key Project Personnel.** The Key Project Personnel identified in the Proposal shall be primarily responsible for carrying out the Services on behalf of the Consultant. The Key Project Personnel shall not be changed without the Commission's prior written approval.

**B. Availability of Personnel.** The Consultant shall provide all personnel necessary to complete the Services including, without limitation, any Key Project Personnel identified in this Agreement. The Consultant shall notify the Commission as soon as practicable prior to terminating the employment of, reassigning, or receiving notice of the resignation of, any Key Project Personnel. The Consultant shall have no claim for damages and shall not bill the Commission for additional time and materials charges as the result of any portion of the Services which must be duplicated or redone due to such termination or for any delay or extension of the Time of Performance as a result of any such termination, reassignment, or resignation.

**C. Approval and Use of Subcontractors.** The Consultant shall perform the Services with its own personnel and under the management, supervision, and control of its own organization unless otherwise approved in advance by the Commission in writing. All subcontractors and subcontracts used by the Consultant shall be acceptable to, and approved in advance by, the Commission. The Commission's approval of any subcontractor or subcontract shall not relieve the Consultant of full responsibility and liability for the provision, performance, and completion of the Services as required by this Agreement. All Services performed under any subcontract shall be subject to all of the provisions of this Agreement in the same manner as if performed by employees of the Consultant. For purposes of this Agreement, the term "Consultant" shall be deemed also to refer to all subcontractors of the Consultant, and every subcontract shall include a provision binding the subcontractor to all provisions of this Agreement.

**D. Removal of Personnel and Subcontractors.** If any personnel or subcontractor fails to perform the Services in a manner satisfactory to the Commission and consistent with commonly accepted professional practices, the Consultant shall immediately upon notice from the Commission remove and replace such personnel or subcontractor. The Consultant shall have no claim for damages, for compensation in excess of the amount contained in this Agreement, or for a

delay or extension of the Time of Performance as a result of any such removal or replacement.

**SECTION 5. CONFIDENTIAL INFORMATION.**

**A. Confidential Information.** The term “*Confidential Information*” shall mean information in the possession or under the control of the Commission relating to the technical, business, or corporate affairs of the Commission; Commission property; user information, including, without limitation, any information pertaining to usage of the Commission's computer system, including and without limitation, any information obtained from server logs or other records of electronic or machine readable form; and the existence of, and terms and conditions of, this Agreement. Commission Confidential Information shall not include information that can be demonstrated: (1) to have been rightfully in the possession of the Consultant from a source other than the Commission prior to the time of disclosure of such information to the Consultant pursuant to this Agreement (“*Time of Disclosure*”); (2) to have been in the public domain prior to the Time of Disclosure; (3) to have become part of the public domain after the Time of Disclosure by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Consultant or the Commission; or (4) to have been supplied to the Consultant after the Time of Disclosure without restriction by a third party who is under no obligation to the Commission to maintain such information in confidence.

**B. No Disclosure of Confidential Information by the Consultant.** The Consultant acknowledges that it shall, in performing the Services for the Commission under this Agreement, have access, or be directly or indirectly exposed, to Confidential Information. The Consultant shall hold confidential all Confidential Information and shall not disclose or use such Confidential Information without the express prior written consent of the Commission. The Consultant shall use reasonable measures at least as strict as those the Consultant uses to protect its own confidential information. Such measures shall include, without limitation, requiring employees and subcontractors of the Consultant to execute a non-disclosure agreement before obtaining access to Confidential Information.

**SECTION 6. STANDARD OF SERVICES AND INDEMNIFICATION.**

**A. Representation and Certification of Services.** The Consultant represents and certifies that the Services shall be performed in accordance with the standards of professional practice, care, and diligence practiced by recognized consulting firms in performing services of a similar nature in existence at the Time of Performance. The representations and certifications expressed shall be in

addition to any other representations and certifications expressed in this Agreement, or expressed or implied by law, which are hereby reserved unto the Commission.

**B. Indemnification.** The Consultant shall, and does hereby agree to, indemnify, save harmless, and defend the Commission against all damages, liability, claims, losses, and expenses (including attorneys' fees) that may arise, or be alleged to have arisen, out of or in connection with the Consultant's performance of, or failure to perform, the Services or any part thereof, or any failure to meet the representations and certifications set forth in Section 6.A of this Agreement.

**C. Insurance.** The Consultant shall provide, at its sole cost and expense, liability insurance in the aggregate amount of \$1,000,000, which insurance shall include, without limitation, protection for all activities associated with the Services. The insurance shall be for a minimum of \$1,000,000 per occurrence for bodily injury and \$1,000,000 per occurrence for property damage. The Consultant shall cause the Commission to be named as an additional insured on the insurance policy described in this Section 6.C. Not later than 10 days after the Commencement Date, the Consultant shall provide the Commission with either: (a) a copy of the entire insurance policy; or (b) a Certificate of Insurance along with a letter from the broker issuing the insurance policy to the effect that the Certificate accurately reflects the contents of the insurance policy. The insurance coverages and limits set forth in this Section 6.C shall be deemed to be minimum coverages and limits, and shall not be construed in any way as a limitation on the Consultant's duty to carry adequate insurance or on the Consultant's liability for losses or damages under this Agreement.

**D. No Personal Liability.** No elected or appointed official or employee of the Commission shall be personally liable, in law or in contract, to the Consultant as the result of the execution of this Agreement.

**SECTION 7. CONSULTANT AGREEMENT GENERAL PROVISIONS.**

**A. Relationship of the Parties.** The Consultant shall act as an independent contractor in providing and performing the Services. Nothing in, nor done pursuant to, this Agreement shall be construed: (1) to create the relationship of principal and agent, employer and employee, partners, or joint ventures between the Commission and Consultant; or (2) to create any relationship between the Commission and any subcontractor of the Consultant.

**B. Conflict of Interest.** The Consultant represents and certifies that, to the best of its knowledge: (1) no elected or appointed City official, employee or agent has a personal financial interest in the business of the Consultant or in this



Agreement, or has personally received payment or other consideration for this Agreement; (2) as of the date of this Agreement, neither Consultant nor any person employed or associated with Consultant has any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement; and (3) neither Consultant nor any person employed by or associated with Consultant shall at any time during the term of this Agreement obtain or acquire any interest that would conflict in any manner or degree with the performance of the obligations under this Agreement.

**C. No Collusion.** The Consultant represents and certifies that the Consultant is not barred from contracting with a unit of state or local government as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue, unless the Consultant is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.*; or (2) a violation of either Section 33E-3 or Section 33E-4 of Article 33E of the Criminal Code of 1961, 720 ILCS 5/33E-1 *et seq.* The Consultant represents that the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Commission prior to the execution of this Agreement, and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that the Consultant has, in procuring this Agreement, colluded with any other person, firm, or corporation, then the Consultant shall be liable to the Commission for all loss or damage that the Commission may suffer, and this Agreement shall, at the Commission's option, be null and void.

**D. Termination.** Notwithstanding any other provision hereof, the Commission may terminate this Agreement at any time upon 15 days written notice to the Consultant. In the event that this Agreement is so terminated, the Consultant shall be paid for Services actually performed and reimbursable expenses actually incurred, if any, prior to termination, not exceeding the value of the Services completed, which shall be determined on the basis of the rates set forth in the Proposal.

**E. Compliance With Laws and Grants.**

1. **Compliance with Laws.** The Consultant shall give all notices, pay all fees, and take all other action that may be necessary to ensure that the Services are provided, performed, and completed in accordance with all required governmental permits, licenses, or other approvals and authorizations that may be required in connection with providing, performing, and completing the Services, and with all applicable statutes, ordinances, rules, and regulations, including, without limitation: any applicable prevailing wage laws; the Fair Labor Standards Act; any

statutes regarding qualification to do business; any statutes requiring preference to laborers of specified classes; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification, including, without limitation, the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, and the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* The Consultant shall also comply with all conditions of any federal, state, or local grant received by the Commission or the Consultant with respect to this Agreement or the Services. Further, the Consultant shall have a written sexual harassment policy in compliance with Section 2-105 of the Illinois Human Rights Act.

2. Liability for Noncompliance. The Consultant shall be solely liable for any fines or civil penalties that are imposed by any governmental or quasi-governmental agency or body that may arise, or be alleged to have arisen, out of or in connection with the Consultant's, or any of its subcontractors, performance of, or failure to perform, the Services or any part thereof.

3. Required Provisions. Every provision of law required by law to be inserted into this Agreement shall be deemed to be inserted herein.

**F. Default.** If it should appear at any time that the Consultant has failed or refused to prosecute, or has delayed in the prosecution of, the Services with diligence at a rate that assures completion of the Services in full compliance with the requirements of this Agreement, or has otherwise failed, refused, or delayed to perform or satisfy the Services or any other requirement of this Agreement ("***Event of Default***"), and fails to cure any such Event of Default within ten business days after the Consultant's receipt of written notice of such Event of Default from the Commission, then the Commission shall have the right, without prejudice to any other remedies provided by law or equity, to pursue any one or more of the following remedies:

1. Cure by Consultant. The Commission may require the Consultant, within a reasonable time, to complete or correct all or any part of the Services that are the subject of the Event of Default; and to take any or all other action necessary to bring the Consultant and the Services into compliance with this Agreement.

2. Termination of Agreement by Commission. The Commission may terminate this Agreement without liability for further payment of amounts due or to become due under this Agreement after the effective date of termination.

3. Withholding of Payment by Commission. The Commission may withhold from any payment, whether or not previously approved, or may recover from the Consultant, any and all costs, including attorneys' fees and administrative

expenses, incurred by the Commission as the result of any Event of Default by the Consultant or as a result of actions taken by the Commission in response to any Event of Default by the Consultant.

**G. No Additional Obligation.** The Parties acknowledge and agree that the Commission is under no obligation under this Agreement or otherwise to negotiate or enter into any other or additional contracts or agreements with the Consultant or with any vendor solicited or recommended by the Consultant.

**H. City Council Authority.** Notwithstanding any provision of this Agreement, any negotiations or agreements with, or representations by the Consultant to, vendors shall be subject to the approval of the City Council. For purposes of this Section 7.H, "vendors" shall mean entities engaged in subcontracts for the provision of additional services directly to the City. The City shall not be liable to any vendor or third party for any agreements made by the Consultant without the knowledge and approval of the City Council.

**I. Mutual Cooperation.** The Commission agrees to cooperate with the Consultant in the performance of the Services, including meeting with the Consultant and providing the Consultant with such non-confidential information that the Commission may have that may be relevant and helpful to the Consultant's performance of the Services. The Consultant agrees to cooperate with the Commission in the performance and completion of the Services and with any other consultants engaged by the Commission.

**J. News Releases.** The Consultant shall not issue any news releases, advertisements, or other public statements regarding the Services without the prior written consent of the City Manager.

**K. Ownership.** Designs, drawings, plans, specifications, photos, reports, information, observations, calculations, notes, and any other documents, data, or information, in any form, prepared, collected, or received from the Commission by the Consultant in connection with any or all of the Services to be performed under this Agreement ("***Documents***") shall be and remain the exclusive property of the Commission. At the Commission's request, or upon termination of this Agreement, the Consultant shall cause the Documents to be promptly delivered to the Commission.

**L. GIS Data.** The City has developed digital map information through Geographic Information Systems Technology ("***GIS Data***") concerning the real property located within the City. If requested to do so by the Consultant, the City through the Commission agrees to supply the Consultant with a digital copy of the GIS Data, subject to the following conditions:

1. Limited Access to GIS Data. The GIS Data provided by the City shall be limited to the scope of the Services that the Consultant is to provide for the Commission;

2. Purpose of GIS Data. The Consultant shall limit its use of the GIS Data to its intended purpose of furtherance of the Services; and

3. Agreement with Respect to GIS Data. The Consultant does hereby acknowledge and agree that:

a. Trade Secrets of the City. The GIS Data constitutes proprietary materials and trade secrets of the City, and shall remain the property of the City;

b. Consent of City Required. The Consultant will not provide or make available the GIS Data in any form to anyone without the prior written consent of the City Manager;

c. Supply to City. At the request of the City, the Consultant shall supply the City with any and all information that may have been developed by the Consultant based on the GIS Data;

d. No Guarantee of Accuracy. The City makes no guarantee as to the accuracy, completeness, or suitability of the GIS Data in regard to the Consultant's intended use thereof; and

e. Discontinuation of Use. At such time as the Services have been completed to the satisfaction of the Commission, the Consultant shall cease its use of the GIS Data for any purpose whatsoever, and remove the GIS Data from all of the Consultant's databases, files, and records; and, upon request, an authorized representative of the City shall be afforded sufficient access to the Consultant's premises and data processing equipment to verify compliance by the Consultant with this Section 7.L.3.e.

## **SECTION 8. GENERAL PROVISIONS.**

**A. Amendment.** No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by the Commission and the Consultant in accordance with all applicable statutory procedures.

**B. Assignment.** This Agreement may not be assigned by the Commission or by the Consultant without the prior written consent of the other party.

**C. Binding Effect.** The terms of this Agreement shall bind and inure to the benefit of the Commission, the Consultant, and their agents, successors, and assigns.

**D. Notice.** All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered (1) personally, (2) by a reputable overnight courier, or by (3) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise expressly provided in this Agreement, notices shall be deemed received upon the earlier of: (a) actual receipt; (b) one business day after deposit with an overnight courier, as evidenced by a receipt of deposit; or (c) four business days following deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section 8.D, each party shall have the right to change the address or the addressee, or both, for all future notices and communications to the other party, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Commission shall be addressed to, and delivered at, the following address:

Housing Commission of the City of Highland Park  
Community Development Department  
1150 Half Day Road  
Highland Park, Illinois 60035  
Attention: Charmain Later, Senior Planner

With a copy to:

Holland & Knight LLP  
131 S. Dearborn, 30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attention: Steven M. Elrod, Corporation Counsel

Notices and communications to the Consultant shall be addressed to, and delivered at, the following address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**E. Third Party Beneficiary.** No claim as a third party beneficiary under this Agreement by any person, firm, or corporation shall be made or be valid against the Commission.

**F. Provisions Severable.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

**G. Time.** Time is of the essence in the performance of all terms and provisions of this Agreement.

**H. Calendar Days and Time.** Unless otherwise provided in this Agreement, any reference in this Agreement to "day" or "days" shall mean calendar days and not business days. If the date for giving of any notice required to be given, or the performance of any obligation, under this Agreement falls on a Saturday, Sunday, or federal holiday, then the notice or obligation may be given or performed on the next business day after that Saturday, Sunday, or federal holiday.

**I. Governing Laws.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws, but not the conflicts of laws rules, of the State of Illinois.

**J. Authority to Execute.**

1. **The Commission.** The Commission hereby warrants and represents to the Consultant that the persons executing this Agreement on its behalf have been properly authorized to do so by its corporate authorities.

2. **The Consultant.** The Consultant hereby warrants and represents to the Commission that the persons executing this Agreement on its behalf have the full and complete right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth in this Agreement and that all legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken.

**K. Entire Agreement.** This Agreement constitutes the entire agreement between the parties to this Agreement and supersedes all prior agreements and

negotiations between the parties, whether written or oral, relating to the subject matter of this Agreement.

**L. Waiver.** Neither the Commission nor the Consultant shall be under any obligation to exercise any of the rights granted to them in this Agreement except as it shall determine to be in its best interest from time to time. The failure of the Commission or the Consultant to exercise at any time any such rights shall not be deemed or construed as a waiver of that right, nor shall the failure void or affect the Commission's or the Consultant's right to enforce such rights or any other rights.

**M. Consents.** Unless otherwise provided in this Agreement, whenever the consent, permission, authorization, approval, acknowledgement, or similar indication of assent of any party to this Agreement, or of any duly authorized officer, employee, agent, or representative of any party to this Agreement, is required in this Agreement, the consent, permission, authorization, approval, acknowledgement, or similar indication of assent shall be in writing.

**N. Grammatical Usage and Construction.** In construing this Agreement, pronouns include all genders and the plural includes the singular and vice versa.

**O. Interpretation.** This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

**P. Headings.** The headings, titles, and captions in this Agreement have been inserted only for convenience and in no way define, limit, extend, or describe the scope or intent of this Agreement.

**Q. Exhibits.** Exhibits A through \_\_\_ attached to this Agreement are, by this reference, incorporated in and made a part of this Agreement. In the event of a conflict between an Exhibit and the text of this Agreement, the text of this Agreement shall control.

**R. Rights Cumulative.** Unless expressly provided to the contrary in this Agreement, each and every one of the rights, remedies, and benefits provided by this Agreement shall be cumulative and shall not be exclusive of any other rights, remedies, and benefits allowed by law.

**S. Counterpart Execution.** This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

**HOUSING COMMISSION OF THE  
CITY OF HIGHLAND PARK**

By: \_\_\_\_\_  
Charmain Later, Senior Planner

By: \_\_\_\_\_  
Douglas Ross, Chairman

ATTEST:

**CONSULTANT**

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

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

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

Its: \_\_\_\_\_



**EXHIBIT A**

**PROPOSAL**

***[TO BE PREPARED BY CONSULTANT AND ACCEPTABLE TO CITY]***

***[SHALL INCLUDE SCHEDULE]***

IHDA Loan No. \_\_\_\_\_  
FHA No. \_\_\_\_\_

**MANAGEMENT AGREEMENT  
(Section 8/236 - Up and Running)**

**THIS MANAGEMENT AGREEMENT** (this "Agreement"), made as of the \_\_\_\_\_ day of \_\_\_\_\_, by \_\_\_\_\_ and \_\_\_\_\_ ("Owner"), an Illinois \_\_\_\_\_, having its principal office at \_\_\_\_\_, Illinois, and \_\_\_\_\_ ("Property Manager"), an Illinois \_\_\_\_\_ having its principal office at \_\_\_\_\_, Illinois;

**WITNESSETH:**

**WHEREAS**, Authority has made the Loan to Owner, not personally but as Trustee (the "Trustee") under a Trust Agreement dated \_\_\_\_\_, and known as Trust No. \_\_\_\_\_ (the "Trust") for the acquisition, construction and permanent financing of the Development; Trustee is the legal titleholder of the Development and Owner is the sole beneficiary of the Trust; and

**WHEREAS**, Owner, as a limited or non-profit entity under the Act and a recipient of the benefits of the Loan, is required to comply with the Act, the Regulatory Agreement, all applicable rules and regulations of Authority; and

**WHEREAS**, Property Manager is experienced in the operation, maintenance, marketing, management and leasing of multifamily housing developments similar to the Development; and

**WHEREAS**, Owner desires to retain the services of Property Manager for the operation, maintenance, marketing, management and leasing of the Development and Property Manager desires to provide such services.

**NOW THEREFORE**, in consideration of the mutual agreements contained in this Agreement, Owner and Property Manager agree as follows:

1. **Recitals**. The Recitals set forth above are incorporated in this Agreement by this reference.
2. **Definitions**. As used in the Agreement, the following terms shall have the meanings indicated below:
  - (a) "Act": the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from time to time.
  - (b) "Affirmative Fair Housing Marketing Plan": the Affirmative Fair Housing Marketing Plan for the Development, as approved by Authority.
  - (c) "Authority": the Illinois Housing Development Authority, a body politic and corporate of the State of Illinois created by and existing pursuant to the Act.

IHDA Loan No. \_\_\_\_\_

FHA No. \_\_\_\_\_

(d) "DCR": the debt service coverage ratio for the Development; the DCR is the net operating income of the Development for a fiscal year less Replacement Reserve Payments, divided by the annual debt service on the Loan and any subordinate mortgage loan on the Development. Calculation of the DCR for any calendar year shall be based on the annual audit for the Development required under the Regulatory Agreement, as approved by Authority. No interim audits shall be used.

(e) "Development": the real property legally described on **Exhibit A** attached to this Agreement and made a part of it, commonly known as \_\_\_\_\_, located in \_\_\_\_\_, Illinois; and the improvements, buildings, appurtenances, equipment and personal property located on it. The Development includes \_\_\_\_\_ Units, \_\_\_\_\_ parking spaces and \_\_\_\_\_ square feet of commercial space.

(f) "Development Bank Account": the bank account into which all Development funds, including, but not limited to, rents, charges and other amounts receivable by Owner in connection with the management and operation of the Development, are deposited. The Development Bank Account shall be established in a bank in the State of Illinois whose deposits are insured by the Federal Deposit Insurance Corporation. The funds in the Development Bank Account shall not be commingled with any other funds.

(g) "Fiscal Year": the calendar year unless specifically provided to the contrary in this Agreement.

(h) "Gross Collections": all amounts actually collected by Property Manager as rents or other payments, including, but not limited to, vending machine collections and parking fees, but excluding (1) excess income collected on Section 236 units (if the Development is a Section 236 Development, (2) income derived from interest or investments, (3) discounts and dividends on insurance and (4) security deposits.

(i) "HAP Contract": the Housing Assistance Payments Contract among Authority, Owner and HUD pursuant to which HUD is obligated to make certain rental assistance payments to Authority on behalf of Owner (if the Development is a Section 8 Development).

(j) "HUD": the United States Department of Housing and Urban Development.

(k) "Initial Closing Date": the date the Authority issues its initial closing memorandum in connection with the Loan.

(l) "Initial Rent-up Period": the period from the earlier of eighteen (18) months from the issuance of the Certificate of Occupancy and the date when occupancy of dwelling units in the Development first reaches ninety-five percent (95%).

(m) "Interest Reduction Contract": the Interest Reduction Contract or Agreement for Interest Reduction Payments among Authority, Owner and HUD pursuant to which HUD is obligated to make certain interest reduction payments to Authority on behalf of Owner (if the Development is a Section 236 development).

(n) "Lease": the Authority's Model Lease, or such other form of lease as may be approved in writing by Authority.

(o) "Loan": the mortgage loan made by Authority to Trustee for the acquisition, construction and permanent financing of the Development, evidenced by the Note, secured by the Mortgage and governed by the Regulatory Agreement.

(p) "Loan Documents": the Note, the Mortgage, the Regulatory Agreement and all other documents evidencing, securing or governing the Loan.

(q) "Management Plan": the Management Plan for the Development, as approved by Authority, attached to this Agreement as **Exhibit B**; the Management Plan is incorporated in this Agreement by this reference.

(r) "Marketing Plan": the marketing plan for the Development, as approved by Authority.

(s) "Mortgage": that certain mortgage, including any amendments to it, on the Development under which Authority is the mortgagee and Trustee is the mortgagor, and which secures the Loan.

(t) "Note": that certain mortgage note executed by the Trustee evidencing the Loan.

(u) "Operating Budget": the annual operating budget for the Development, as approved by Authority.

(v) "Regulatory Agreement": the Regulatory and Land Use Restriction Agreement executed by the Borrower and Authority at the initial closing of the loan, and any amendments to it, executed by and between Owner, Authority and Trustee, governing the Development.

(w) "Replacement Reserve Payments": The amounts required under the Regulatory Agreement to be deposited annually in the reserve fund for replacements for the Development; and the amounts required to be deposited annually in any other reserve accounts established for the Development.

(x) "Tenant": an individual or family occupying a Unit pursuant to a Lease.

(y) "Tenant Selection Plan": the Tenant Selection Plan approved by Authority for the Development, as amended from time to time.

(z) "Unit": a unit in the Development intended for use as a private dwelling.

3. **Expertise of Property Manager.** Property Manager represents and warrants to Owner that it possesses the necessary skills, experience and expertise to properly manage the Development and to comply with the terms and conditions imposed upon it by this Agreement.

4. **Compliance with Laws.** Property Manager represents and warrants to Owner that it is familiar with, and represents that it shall act in compliance with, all applicable federal, state and local laws, ordinances and regulations when managing and maintaining the Development, including, but not limited, to the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973; and represents and warrants that it is familiar with issues involving equal employment opportunity, fair housing, eviction proceedings, security deposits, non-discrimination in connection with disabled persons, utility services and criminal activities that may result in property forfeiture. Property Manager further represents and warrants to Owner that it will keep informed of, and act in compliance with, all applicable new laws, ordinances and regulations that may be enacted during the term of this Agreement as they pertain to the management of the Development.

5. **Appointment of Property Manager.** Subject to Authority's written approval of this Agreement, Owner appoints Property Manager, and Property Manager accepts such appointment, as Owner's exclusive property manager for the management and leasing of the Development, subject to the terms and conditions of this Agreement. In making and performing this Agreement, Property Manager acts and shall at all times act as an agent of Owner.

6. **Regulation of the Development.** Property Manager acknowledges its receipt of the Regulatory Agreement, certifies that it has reviewed it and is thoroughly familiar with all other applicable rules and regulations of Authority and covenants with Owner that it shall undertake and perform all of Owner's management duties and responsibilities in compliance with the Act, the rules and regulations of Authority, the Regulatory Agreement and the other Loan Documents.

Property Manager further acknowledges that \_\_\_\_\_ percent (\_\_\_\_\_ %) of the Units may receive the benefit of:

(a) mortgage interest reduction payments pursuant to Section 236 of the National Housing Act ("Section 236 Payments"); or

(b) housing assistance payments under Section 8 of the United States Housing Act of 1937 ("Section 8 Payments"); or

(c) \_\_\_\_\_ (strike inapplicable subparagraph(s)).

7. **Meetings with Owner and Authority.** Upon the request of Owner, Property Manager agrees to cause a representative of Property Manager to confer with Owner and Authority and to attend meetings with Owner and/or Authority at any reasonable time or times requested by Owner or Authority.

8. **Provision of Information.** As soon as practicable, but not later than final completion of the Development, Owner shall furnish Property Manager with a complete set of "as built" plans and detailed specifications for the Development, as finally approved by Authority, and copies of all guaranties and warranties pertinent to construction, fixtures and equipment of the Development. With the aid of this information and inspection by competent personnel, Property Manager shall thoroughly familiarize itself with the character, location, construction, layout, plan and operation of the Development, and especially the electrical, heating, plumbing, air conditioning and ventilating systems, elevators, and all other mechanical equipment in the Development.

9. **Disclosure.** Property Manager shall not disclose to third parties any information pertaining to the Development except when necessary, to carry out Property Managers duties under the terms of this Agreement or in response to written requests from Authority or HUD.

10. **Waiver of Lien Rights.** To the extent permitted by law, and provided that the Loan has not been repaid, Property Manager subordinates any and all lien rights it may be able to assert, during the term of this Agreement or thereafter, on or against the Development arising from the services to be provided under this Agreement to the lien of the Mortgage. Property Manager shall provide whatever documentation may be requested by Owner and Authority to evidence Property Manager's subordination of its lien rights.

11. **Compliance.** Property Manager shall furnish whatever information is requested by Owner or Authority that would be necessary for Owner or Authority to determine whether Property Manager is acting in compliance with the terms and conditions of this Agreement.

12. **Marketing.** After the Initial Rent-up Period, Property Manager, with the marketing agent, if applicable, shall carry out the marketing activities prescribed in the Management Plan, observing all requirements of the Regulatory Agreement, the Marketing Plan approved by Authority and the Affirmative Fair Housing Marketing Plan. Subject to the prior approval of Owner, advertising expenses incurred by Property Manager on behalf of Owner pursuant to the Operating Budget shall be paid out of the Development Bank Account as expenses of the Development.

13. **Rentals.** Property Manager shall offer for rent and shall rent the Units, parking spaces, commercial space (if any) and other rental facilities and concessions in the Development in accordance with the rules and regulations of Owner and Authority, as amended from time to time. Owner authorizes Property Manager to execute, on Owner's behalf, Leases and, if applicable, commercial leases, if applicable, in connection with such rentals. In connection with such rentals, the following provisions shall apply:

(a) Property Manager shall comply with the requirements of the Marketing Plan, the Affirmative Fair Housing Marketing Plan and the Tenant Selection Plan. A copy of the Affirmative Fair Housing Marketing Plan and the Tenant Selection Plan shall at all times be kept at the Development, and shall be made available to any Tenant or prospective Tenant upon request. Property Manager shall cause all rental agents, on-site managers and property supervisors for the Development, and all other employees, to extent applicable, to be familiar with the contents of such Plans.

(b) Property Manager shall show Units to all prospective Tenants.

(c) Property Manager shall take and process applications for rental of Units. If an application is rejected, the applicant shall be promptly advised in writing in the manner provided in the Tenant Selection Plan.

(d) Property Manager shall prepare all Leases, parking permits and other pertinent agreements, and shall execute them in its name as agent for Owner. The terms of all Leases shall comply with the pertinent provisions of the Regulatory Agreement and the directives of Authority. All Leases shall be in a form approved by Authority.

(e) Owner shall, from time to time, furnish Property Manager with rent schedules, which shall show rents for Units and other charges for facilities and services approved by Authority. In no event shall such rents and other charges be exceeded or reduced without the prior written approval of Authority. Tenant eligibility for Units that are rented at less than market rents, and the amount of such lesser rents, shall be determined in accordance with the Regulatory Agreement and/or the directives of Authority submitted to Owner and Property Manager.

(f) Property Manager shall collect, deposit and disburse security deposits, if required, in accordance with all applicable State and local laws and the terms of each of Tenant's Lease. The amount of each security deposit shall be as specified in the Management Plan, or if not so specified, as approved by Authority. Property Manager shall hold security deposits in a trust account, separate from all other accounts and funds, in a bank or other financial institution whose office is in the State of Illinois and whose deposits are insured by an agent of the United States Government, all in accordance with the terms of the Regulatory Agreement. This account shall be controlled and managed by Property Manager and designated of record as "Development Security Deposit Trust Account". Interest on security deposits shall be paid in accordance with all applicable State and local laws.

(g) Property Manager shall maintain a current list of prospective Tenants and undertake all arrangements necessary and incidental to the acceptance or rejection of rental applications and the execution of Leases, all as provided in the Tenant Selection Plan. Property Manager shall exercise its best efforts (including, but not limited to, placement of advertising; assistance in completion of rental applications and execution of Leases; processing of documents and credit and employment verifications; and explanation of the rules of the Development), to effect the leasing of Units, renewal of Leases and, in accordance with the terms of the Lease, subleasing of Units.

(h) If there is commercial space in the development, Property Manager shall negotiate commercial leases and concession agreements, and, subject to prior approval by Owner and Authority of all terms and conditions of such leases and agreements, shall execute them in its name, identified as agent for Owner. Commercial rents for the Development shall not be less than the minimum approved by Owner and Authority.

(i) Property Manager shall perform such other acts as requested by Owner or Authority that are reasonable, necessary and proper in the discharge of Property Manager's duties under this Agreement.

(j) Property Manager shall prorate the first month's rent collected from a Tenant should such Tenant move into a Unit on any day other than the first day of the month. If the Tenant's occupancy of the Unit occurs after the twentieth (20th) day of the month, the prorated amount, plus the next month's rent, shall be collected on or before the first day of occupancy.

(k) Property Manager shall participate in such on-site inspections of the Development as may be required by Authority or Owner, including, but not limited to, (i) participation with each new Tenant in the inspection prior to occupancy of the Unit identified in the Lease with the Tenant and (ii) participation with the Tenant in the inspection of that Unit at least once each year thereafter.

(l) Property Manager shall immediately notify Owner and Authority in writing of all claims in connection with the Development asserted against Property Manager or the Development, or of any lawsuit served upon Property Manager in connection with the Development.

(m) Property Manager shall counsel all prospective Tenants concerning eligibility for Units, and shall be responsible for determining tenant eligibility for federal rent subsidy programs and shall fully comply with all laws and regulations governing eligibility, certification and recertification of Tenants receiving the benefit of such federal rent subsidy programs. Property Manager shall provide, and to the extent possible, verify, income certification and recertification forms for execution by each Tenant.

14. **Collection of Rents and Other Receipts.** Property Manager shall collect when due all rents, charges and other amounts receivable by Owner in connection with the management and operation of the Development. Such receipts (except for Tenants' security deposits, which shall be handled as specified in **Paragraph 13(f)** above) shall be held in the Development Bank Account, in an Illinois domiciled financial institution, separate from all other accounts and funds. The Development Bank Account shall be carried in Property Manager's name and designated of record as "\_\_\_\_\_ Development Bank Account".



15. **Enforcement of Leases.**

(a) Property Manager shall secure full compliance by each Tenant with the terms of such Tenant's Lease. Voluntary compliance shall be emphasized, and Property Manager shall counsel Tenants and make referrals to community agencies in cases of financial hardship or other circumstances deemed appropriate by Property Manager, all to the end that involuntary termination of tenancies shall be avoided to the maximum extent, consistent with sound management of the Development. Nevertheless, subject to the procedures prescribed in the Management Plan and the Regulatory Agreement, Property Manager may lawfully terminate any tenancy when, in Property Manager's judgment, sufficient cause for such termination occurs under the terms of the Tenant's Lease, including, but not limited to, nonpayment of rent. For this purpose, Property Manager is authorized to consult with legal counsel to be designated by Owner; to bring actions for eviction; to execute notices to vacate; and to initiate judicial pleadings incident to such actions. Property Manager shall keep Owner informed of such actions and shall follow such instructions as Owner may prescribe for the conduct of any such action. Reasonable attorneys' fees and other necessary costs incurred in connection with such actions shall be paid out of the Development Bank Account as expenses of the Development pursuant to the Operating Budget of the Development.

(b) Property Manager shall consult with and make recommendations to Owner regarding security for the Development and take all steps reasonably necessary to implement at the Development the security program authorized by Owner. Property Manager shall promptly report any suspicious or illegal activities to the appropriate police authority, and shall strictly enforce the terms of the Leases regarding criminal activities by Tenants or their authorized guests.

(c) Property Manager shall use its best efforts to prevent unauthorized persons from being present at the Development. If Tenants fail to control the improper behavior of their guests while on Development property, or if Tenants assist unauthorized persons in remaining on the Development property, Property Manager shall strictly enforce the terms of the Leases of such Tenants.

(d) Property Manager shall fully comply with all applicable federal, state and local laws and regulations concerning termination of Leases and evictions of Tenants receiving the benefits of any Federal rent subsidy program.

16. **Maintenance and Repair.** Property Manager shall cause the Development to be maintained in a decent, safe and sanitary condition and in a rentable and tenantable state of repair, all in accordance with the Management Plan, the budget approved by Authority, the Regulatory Agreement and local laws, codes and ordinances. Property Manager otherwise shall maintain the Development at all times in a condition acceptable to Owner and Authority, including, but not limited to, performance of cleaning, painting, decorating, plumbing, carpentry, grounds care and such other maintenance and repair work as may be necessary. In connection with such maintenance, the following provisions shall apply:

(a) Property Manager shall give special attention to preventive maintenance.

(b) Subject to Owner's prior approval, Property Manager shall contract with qualified independent contractors for the maintenance and repair of major mechanical systems, including, but not limited to, air conditioning systems and elevators, and for the performance of extraordinary repairs beyond the capability of regular maintenance employees. Property Manager shall require each such contractor to be insured in such amounts and with such insurance companies as may be acceptable to Owner. Owner shall be named as an additional insured under all such insurance contracts.

(c) Property Manager shall systematically and promptly receive and investigate all service requests from Tenants, take such action in connection with them, as may be justified, and keep records of such actions. Emergency requests shall be received and serviced on a twenty-four (24) hour basis. Property Manager shall report complaints of a serious nature to Owner after investigation. Owner and Authority shall have the right to receive copies of all service requests and the reports of action taken on them.

(d) Property Manager shall use its best efforts to take such action as may be necessary to comply promptly with any and all orders or requirements of federal, state or local authorities having jurisdiction over the Development, including orders of the Board of Fire Underwriters or other similar bodies. If specifically directed by written notice from Authority, Property Manager shall not take any action under this **Paragraph 16(d)** so long as Owner establishes to the continuing satisfaction of Authority that Owner is contesting, or has affirmed its intention to contest, any such order or requirement and promptly institutes proceedings contesting any such order or requirement. Property Manager shall notify Owner and Authority in writing promptly, and in no event later than seventy-two (72) hours from the time of receipt, of all such orders and notices.

(e) Subject to the provisions of **Paragraph 20** hereof, Property Manager is authorized to purchase all materials, equipment, tools, appliances, supplies and services necessary for proper maintenance or repair of the Development.

(f) Notwithstanding any of the foregoing provisions, the prior approval of Owner and Authority shall be required for any expenditure that exceeds Ten Thousand and No/100 Dollars (\$10,000.00) in any one instance for labor, materials, or otherwise, in connection with the maintenance and repair of the Development, except for recurring expenses within the limits of the Operating Budget and except for emergency repairs involving manifest danger to persons or property, or required to avoid suspension of any necessary service to the Development. If any emergency repairs are necessary, Property Manager shall notify Owner and Authority in writing of the fact promptly, and in no event later than seventy-two (72) hours from the occurrence of such event.

17. **Utilities and Services.** In accordance with the Operating Budget, Property Manager shall make arrangements for water, electricity, gas, fuel oil, sewage and trash disposal, vermin extermination, decorating, laundry facilities and telephone service. Subject to Owner's prior approval, Property Manager shall enter into such contracts as may be necessary to secure such utilities and services.

18. **Employees.** All personnel physically present at the Development shall be employees of the Property Manager and paid from the Development Bank Account as an expense of the Development. Such employees shall be hired, supervised and discharged exclusively by the Property Manager subject to the following conditions:

(a) Property Manager shall at all times have sufficient personnel physically present at the Development for the full and efficient performance of its duties under this Agreement, including physical presence of responsible persons at such times as may reasonably be requested by Owner.

(b) All hiring of Development employees shall be in accordance with the Operating Budget for the Development, unless otherwise authorized by Authority in writing.

19. **Disbursements from Development Bank Account.**

(a) From the funds collected and held by Property Manager in the Development Bank Account pursuant to **Paragraph 14** above, Property Manager shall, unless otherwise directed by Authority in writing, make the following disbursements from the Development Bank Account promptly when payable and in the following priority: (1) amounts required to be returned to HUD pursuant to the Regulatory Agreement; (2) salaries and any other compensation due and payable to the employees referred to in **Paragraph 18** above, and the withholding taxes, insurance premiums, and Social Security and other payments required in conjunction with the payroll of such employees; (3) rent surcharges to be returned to Authority pursuant to the Regulatory Agreement; (4) the monthly escrow payments for taxes and assessments, fire and other hazard insurance premiums; utilities; interest on the Mortgage, amortization of the principal of the Mortgage, fees, and charges of Authority; establishment and maintenance of the reserve fund for replacements required under the Regulatory Agreement, and other escrow deposits as required by the Regulatory Agreement or Mortgage or as directed by Authority; and (5) other payments due and payable by the Development as operating expenses incurred pursuant to the Operating Budget and in accordance with this Agreement, including Property Manager's compensation.

(b) Except for the disbursements mentioned in **Paragraph 19(a)** above, funds shall be disbursed or transferred from the Development Bank Account only pursuant to the terms of the Regulatory Agreement or upon the prior written approval of Authority, which shall be obtained by Owner.

(c) If the balance in the Development Bank Account is at any time insufficient to pay disbursements due and payable under **Paragraph 19(a)** above, Property Manager shall immediately inform Owner and Authority of such deficiency and Owner shall then remit to Property Manager sufficient funds to cover such deficiency, but only to the extent that funds of the Development are available. If the Owner fails to remit to Property Manager sufficient funds within five (5) days after written notice by Property Manager, Property Manager shall promptly notify Authority in writing. In no event shall Property Manager be required to use its own funds to pay such disbursements.

20. **Operating Budgets.** Property Manager shall prepare a proposed Operating Budget for each Fiscal Year during the term of this Agreement, and shall submit it to Owner and Authority at least ninety (90) days before the beginning of such Fiscal Year. In preparing a proposed Operating Budget, Property Manager shall use its best efforts to take into account the anticipated increases in rents, real estate taxes, utility charges and other operating costs from the previous Fiscal Year. To the extent feasible, Property Manager shall support anticipated increases in real estate taxes and utility charges with written evidence or documentation. The proposed Operating Budget for the Development for each Fiscal Year shall be subject to approval by Owner and Authority. Owner shall promptly inform Property Manager of all changes, if any, incorporated in the Operating Budget, and Property Manager shall make no expenditures in excess of the amounts set forth in the Operating Budget for each category of operation expense itemized without the prior written approval of Owner and Authority, except as permitted pursuant to **Paragraph 16(f)** for emergency repairs involving manifest danger to persons or property, or that are required to avoid suspension of any services to the Development.

21. **Records and Reports.** In addition to any requirements specified in the Management Plan or other provisions of this Agreement, Property Manager shall have the following responsibilities with respect to records and reports:

(a) Property Manager shall establish and maintain a comprehensive system of records, books and accounts, including computerized systems and otherwise satisfactory to Owner. All records, books and accounts shall be subject to examination and reproduction at reasonable hours by any authorized representative of Owner or Authority.

(b) In accordance with the terms of the Regulatory Agreement, and with respect to each Fiscal Year ending during the term of this Agreement, Property Manager shall cause an annual financial report for the Development, based upon the preparer's examination of the books and records of Owner and the Development, to be prepared by an independent certified public accountant licensed in the State of Illinois selected by Owner and acceptable to Authority. The report shall be prepared in accordance with generally accepted accounting principles and the directives of Authority, shall be certified by the preparer and shall be submitted to Owner for Owner's further certification and submission to Authority within the period provided for in the Regulatory Agreement after the end of the Fiscal Year. Compensation for the preparer's services may be paid out of the Development Bank Account as an expense of the Development.

(c) Property Manager shall prepare a monthly report, in form satisfactory to Authority, containing, among other things, financial statements of income and expense for the Development. Property Manager shall submit each such report to Owner within fifteen calendar (15) days after the end of each month.

(d) Property Manager shall promptly furnish such information (including monthly occupancy reports) in connection with the Development as may be requested from time to time by Owner or Authority.

(e) Property Manager shall prepare, on a monthly basis, the reports and certifications required under the Regulatory Agreement to obtain Section 8 Payments, Section 236 Payments, rent supplement payments or rental assistance payments, as the case may be, and shall submit such reports and certifications to Authority within ten (10) days after the end of the month for which such payments are claimed. Payments received pursuant to this **Paragraph 21(e)** shall be applied in accordance with the terms of the Regulatory Agreement.

(f) By the fifteenth (15<sup>th</sup>) day of each month, Property Manager shall furnish to Owner an aged, itemized list of all delinquent accounts, including rental accounts, as of the tenth (10<sup>th</sup>) day of such month, as well as a report on the action Property Manager has taken in connection with such delinquent accounts.

(g) Except as otherwise permitted in writing by Authority, all bookkeeping, data processing services, and management overhead expenses shall be borne by Property Manager out of its funds and shall not be treated as Development expenses.

(h) Property Manager shall prepare, execute and file all forms, reports and returns required by law in connection with the employment of personnel, unemployment insurance, workmen's compensation insurance, disability benefits, Social Security and other similar insurance, and all other benefits or taxes now in effect or hereafter imposed.

22. **Fidelity Bond.** Property Manager shall furnish and maintain, at the expense of the Development, for the duration of this Agreement and any renewals or extensions of it, plus thirty (30) days after its expiration or termination, a commercial blanket bond (the "Fidelity Bond") in favor of Owner and Authority, jointly or severally, both in an amount determined by Authority in its sole discretion, but not less than two (2) months gross potential rents for the Development plus the aggregate amount of all Tenant security deposits and in a form and with a company or companies acceptable to Authority. The Fidelity Bond shall cover Property Manager and all employees hired by Property Manager in connection with this Agreement. The Fidelity Bond shall cover losses discovered by Owner or Authority for the period of two (2) years after the occurrence of such losses.

23. **Bids, Discounts and Rebates.** Property Manager shall obtain contracts, materials, supplies, utilities and services on the most advantageous terms to the Development, and shall solicit three (3) formal, written bids on all contracts or purchases exceeding Ten Thousand and No/100 Dollars (\$10,000.00) for those items that can be obtained from more than one source. Property Manager shall secure and credit to Owner all discounts, rebates or commissions obtainable with respect to purchases, service contracts and all other transactions on Owner's behalf. Property Manager shall not purchase services or materials from an entity in which Property Manager has an interest unless Owner and Authority approve such purchase in writing.

24. **Social Services Program.** If applicable, Property Manager shall be responsible to Owner for carrying out the social services program, if any, described in the Management Plan.

25. **On-Site Management Facilities.** Owner shall furnish Property Manager with suitable, furnished office space on the site of the Development, including electricity, heat, water, janitorial service, telephone, postage, stationery, office equipment and supplies.

26. **Indemnification.**

(a) Owner agrees to indemnify, defend and hold Property Manager harmless from liability arising out of or in connection with the management of the Development, unless such liability is a result of the negligence or willful misconduct of Property Manager. Property Manager shall be entitled to recover from Owner its costs of litigation and reasonable attorney's fees if Property Manager incurs such costs and fees due to Owner's failure to act in accordance with the terms of this Agreement.

(b) Property Manager shall indemnify, defend and hold Owner harmless from and against any and all claims, causes of action, liabilities, losses or damages that may be asserted against Owner as a result of Property Manager's failure to act in accordance with the terms of this Agreement. Owner shall be entitled to recover from Property Manager its costs of litigation and reasonable attorney's fees if Owner incurs such costs and fees due to Property Manager's failure to act in accordance with the terms of this Agreement.

(c) It is expressly understood and agreed that the provisions contained in **Paragraphs 26(a) and 26(b)** shall survive the termination of this Agreement to the extent the cause arose prior to such termination.

27. **Insurance.** Property Manager shall cause the insurance coverage required under the Mortgage to be placed and kept in effect at all times with insurance companies approved by Owner and Authority, all in accordance with the terms of the Mortgage. Property Manager and Authority shall be designated as an insured under the comprehensive general liability insurance policy in an amount acceptable to Property Manager, Owner and Authority. Property Manager shall promptly investigate and furnish to Owner and Authority full reports of all accidents, claims and any potential claims known to Property Manager for damages related to the Development and shall cooperate with Owner's insurers in connection with such accidents and claims.

In addition to the insurance coverage required under the Mortgage, Property Manager shall cause insurance coverage requested by Owner or Authority to be kept in effect to protect Property Manager and Owner against any and all claims, liabilities or damages arising from any social programs coordinated by Property Manager either on or off the Development property. Proof of all insurance coverage shall be forwarded to Owner or Authority at the request of either party.

28. **Escrow Payments.** Property Manager shall make from the Development Bank Account monthly escrow payments required under the Mortgage for insurance, tax and such other reserve or escrow accounts for the Development as may be required pursuant to the Mortgage and the Regulatory Agreement. Property Manager promptly shall present tax bills and insurance premium notices to the escrow agent for payment and shall furnish Owner and Authority with evidence of timely payment of such taxes and insurance premiums.

29. **Property Manager's Compensation.**

(a) Property Manager shall be compensated for its services under this Agreement by monthly fees, to be paid out of the Development Bank Account and treated as Development expenses. Such fees shall be payable on the \_\_\_\_\_ day of each month following the month in which the services were rendered. Each such monthly fee shall be a sum equal to \_\_\_\_\_ percent (\_\_\_\_\_% ) of (strike inapplicable subparagraph):

(1) **Section 236 Developments:** Gross Collections received during the preceding month (including rent supplement payments, rental assistance payments, commercial rents and fees from concessionaires); or

(2) **Section 8 Developments:** Gross Collections received during the preceding month (including all approved payments and/or vacancy loss reimbursement under the HAP Contract, commercial rents and fees from concessionaires).

(b) If Property Manager has an identity of interest with Owner or the general partners of Owner (if Owner is a limited partnership), and if the Development (i) fails to maintain a DCR of at least 1:10 to 1; or (ii) maintains a DCR of at least 1.10 to 1 but fails to expend funds for deferred maintenance deemed necessary by Authority, or for Administrative Expenses, Operating Expenses and/or Maintenance Expenses (all as defined in the Regulatory Agreement) in amounts established in the Operating Budget; Authority may, in its sole discretion, reduce the management fee to a level consistent with the rates of management agents that are satisfactorily managing similar developments in the general vicinity of the Development, as determined by the Authority in its sole discretion, and that do not have an identity of interest with the owners, or the principals of the owners, of such developments.

(c) In addition, if the Development fails (i) to maintain a DCR of at least 1.0 to 1 or the Development is delinquent for more than sixty (60) days in debt service payments on the Loan or Replacement Reserve Payments or (ii) the Development maintains a DCR of at least 1.0 to 1 and is current in its Replacement Reserve Payments but fails to expend funds for deferred maintenance deemed necessary by Authority, or for Administrative Expenses, Operating Expenses and/or Maintenance Expenses in amounts established in the Operating Budget, Authority may, in its sole discretion, further reduce the management fee to a level it deems appropriate.

(d) If the management fee has been reduced pursuant to **subparagraphs 29(b) or 29(c)**, Owner and/or Property Manager may request in writing that the management fee be restored to its previous level if (i) the DCR reaches 1.10 to 1 or 1.0 to 1, as applicable, or (ii) any necessary deferred maintenance has been completed and, if applicable, the appropriate funds have been expended for Administrative Expenses, Operating Expenses and Maintenance Expenses. Authority will evaluate such requests based on its evaluation of (i) the impact of an increase in the management fee on the financial condition of the Development and (ii) the anticipated needs of the Development for capital and operational expenditures.

30. **Term of Management Agreement.** This Agreement shall be in effect for a period of \_\_\_\_\_ (\_\_\_\_\_) year(s), commencing on the \_\_\_\_\_ day of \_\_\_\_\_, and ending on the \_\_\_\_\_ day of \_\_\_\_\_, subject, to the following conditions:

(a) This Agreement may be terminated upon the mutual written consent of Owner, Property Manager and Authority, or for cause by either Property Manager or Owner.

(b) Property Manager shall have the right to terminate this Agreement upon sixty (60) days advance written notice to Owner and Authority.

(c) Owner shall have the right to terminate this Agreement upon sixty (60) days advance written notice to Property Manager and Authority, provided that Owner has identified another property manager, approved by Authority, for the Development.

(d) If a petition in bankruptcy is filed by or against Owner or Property Manager, or if Owner or Property Manager makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the other party may terminate this Agreement without notice. The party invoking such termination shall give prompt notice of such action to Authority.

**(e) Property Manager and Owner expressly agree that Authority shall have the right to terminate this Agreement, with or without cause, on ten (10) days advance written notice to Owner and Property Manager;** in the event of such termination by Authority shall have the right, in its sole discretion, to appoint a property manager (the "New Manager") who shall manage the Development on the same terms and conditions as the Property Manager; provided, however, that Authority may determine the compensation to be provided to the New Manager. The term of the New Manager (the "Appointed Term") shall be for a period not to exceed eighteen (18) months. During the Appointed Term, Owner shall not have the right to appoint a new property manager, and the New Manager shall be subject to the direction of Authority, and not Owner. After the expiration of the Appointed Term, the Owner shall have the right to appoint a property manager, subject to the terms and conditions of a management agreement approved by Authority.



In the event of a financial default by Owner [and Trustee] under the Mortgage, the Mortgage Note or the Regulatory Agreement, Authority need not give the aforesaid ten (10) days notice but shall have the right to terminate this Agreement immediately.

(f) Within thirty (30) days after the termination of this Agreement for any reason, Property Manager shall submit to Owner and Authority the financial statements required under **Paragraph 21** hereof to the date of such termination, and after Property Manager and Owner have accounted to each other with respect to all matters outstanding as of the date of termination and Property Owner has fully complied with all terms and conditions of this Agreement, Owner shall furnish Property Manager security, in form and amount reasonably satisfactory to Property Manager, against any obligations or liabilities that Property Manager incurred pursuant to the terms of this Agreement on behalf of Owner.

31. **Rights and Responsibilities Upon Termination.** If this Agreement is terminated for any reason:

(a) No further or additional liability shall attach to Owner, Property Manager or Authority, except for Property Manager's compensation to the date of such termination, and except for such liability as may exist under this Agreement arising out of acts or obligations predating the date of such termination.

(b) Within ten (10) days after this Agreement expires or is terminated, Property Manager shall deliver to Owner all "as built" plans and surveys of the Development in its possession and all books and records concerning the Development.

(c) Within fifteen (15) days after the termination of this Agreement, Property Manager shall close all accounts and pay the balance or assign all certificates of deposit regarding the Development as follows:

- (1) if the termination is by Owner with consent of Authority, to Owner; and
- (2) if the termination is by Authority, to Authority.

32. **Assignments.** This Agreement shall inure to the benefit of and constitute a binding obligation upon Owner and Property Manager and their respective successors and assigns; however, Property Manager shall not assign this Agreement, or any of its duties under it, without the prior written consent of Owner and Authority.

33. **Subordination of Agreement.** Owner and Property Manager each acknowledge that this Agreement is subject and subordinate to the Regulatory Agreement, including all exhibits attached to it, and (1) the Agreement to Enter into Housing Assistance Payments Contract and the HAP Contract or (2) the Interest Reduction Contract, as applicable. To the extent this Agreement conflicts with any of the provisions or requirements set forth in the Regulatory Agreement or the exhibits to it, the Regulatory Agreement and exhibits shall prevail and control.

34. **Amendment.** This Agreement constitutes the entire agreement between Owner and Property Manager and no amendment or modification of it shall be valid or enforceable except by supplemental agreement in writing, executed by the parties hereto and approved by Authority.

35. **Remedies**

(a) **Equitable Relief.** Owner or Authority may apply to any court, state or federal, for specific performance of this Agreement, for an injunction against any violation of this Agreement or for such other relief as may be appropriate, since the injury arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain.

(b) **Venue.** Owner and Property Manager agree that if Authority brings an action in connection with this Agreement or is a defendant in an action brought by Owner or Property Manager, venue shall be proper, at the option of Authority, either in the Circuit Court of Cook County, Illinois or in the United States District Court for the Northern District of Illinois, Eastern Division, as the case may be.

(c) **Attorneys' Fees.** In the event of any litigation between Owner and Property Manager arising out of or in connection with this Agreement, including, but not limited to, litigation arising out of or in connection with **Paragraph 26** hereof, the prevailing party shall be entitled to recover from the other party its costs of litigation and reasonable attorneys' fees incurred in connection with such litigation.

(d) **Authority's Costs of Enforcing Agreement.** Owner or Property Manager, as the case may be, shall pay to Authority any and all costs, expenses and reasonable attorneys' fees that Authority may suffer, incur or become liable for by reason of Authority enforcing, or attempting to enforce, the terms and provisions of this Agreement if the Authority prevails in its position.

(e) **Remedies Cumulative.** Authority's and Owner's remedies are cumulative and the exercise of one shall not be deemed an election of remedies, nor foreclose the exercise of Authority's or Owner's other remedies. Neither Owner nor Authority may waive any breach on behalf of the other party. No waiver by Authority or Owner of any breach of this Agreement shall be deemed to be a waiver of any other or subsequent breach. The failure or delay of Authority or Owner in exercising any of its rights under this Agreement in any one or more instances, or the exercise of less than all of their rights in any one or more instances, shall not be deemed or construed as a waiver of any such rights.

36. **Successors.** This Agreement shall bind, and the benefits shall inure to, the parties to this Agreement, their legal representatives, successors in office or interest and assigns; however, Property Manager may not assign this Agreement, or any of its obligations under this Agreement, without the prior written approval of Owner and Authority.

IHDA Loan No. \_\_\_\_\_

FHA No. \_\_\_\_\_

37. **Survival.** All representations, warranties and covenants to indemnify shall survive the termination of this Agreement if the basis for the claim or cause of action in connection with such representations, warranties and covenants arose during the term of this Agreement.

38. **Notices.** Any notice, demand, request or other communication which any party may desire or may be required to give to any other party hereunder shall be given in writing, at the addresses set forth below, by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

(a) Property Manager:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(b) Owner:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) Authority:

Illinois Housing Development Authority  
401 N. Michigan Avenue, Suite 700  
Chicago, Illinois 60611  
Attn: Director, Asset Management Services Department

Such addresses may be changed by notice to the other party given in the same manner as provided in this **Paragraph 38**. Any notice, demand, request or other communication sent pursuant to subsection (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

Except as otherwise specifically required this Agreement, notice of the exercise of any right or option granted to Property Manager by this Agreement is not required to be given.

39. **Authority As Third-Party Beneficiary.** Authority shall be a third-party beneficiary of this Agreement regarding the fulfillment of the duties and obligations imposed upon Owner and Property Manager under this Agreement. Owner and Property Manager each warrants that it has not executed, and represents that it will not execute, any other agreement with provisions contradictory to or in opposition to the provisions of this Agreement, and that, in any event, the requirements of this Agreement are (i) paramount and controlling as to the rights and obligations set forth in any other agreement and (ii) supersede any other requirements in conflict with this Agreement.

40. **Interpretation of Agreement.**

(a) **Governing Law.** The laws of the State of Illinois, exclusive of its conflict of laws provisions, shall govern the interpretation and enforcement of this Agreement.

(b) **Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this Agreement.

(c) **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or the application of it to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of it to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such determination and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(d) **Gender.** The use of the plural in this Agreement shall include the singular; the singular shall include the plural; and the use of any gender shall be deemed to include all genders.

(e) **Counterparts.** This Agreement may be executed in counterparts, and each counterpart shall, for all purposes for which an original of this Agreement must be produced or exhibited, be the Agreement, but all such counterparts shall constitute one and the same instrument.

**[SIGNATURES ARE ON THE FOLLOWING PAGE]**

IHDA Loan No. \_\_\_\_\_

FHA No. \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed by their authorized representatives.

**OWNER:**

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

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

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

FEIN: \_\_\_\_\_

**PROPERTY MANAGER:**

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

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

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

FEIN: \_\_\_\_\_

This Agreement and the Property Manager appointed in it are approved as of this \_\_\_\_\_ day of \_\_\_\_\_.

**ILLINOIS HOUSING DEVELOPMENT AUTHORITY:**

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

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

Title: Director, AMS

## 2.17 MANAGEMENT AGREEMENT REQUIREMENTS

a. Applicability. Projects with identity-of-interest agents or independent fee agents must execute a Management Agreement. An Agreement is recommended, but not required, for owner-managed projects or projects - managed by a project administrator.

b. Required contents. The owner and agent may negotiate their own form of agreement provided that it contains language to meet the following requirements:

(1) Scope of service. All management agreements must describe the services the agent is responsible for performing and for which the agent will be paid management fees.

(2) Required clauses. All agreements must provide that:

(a) Management fees will be computed and paid according to HUD requirements.

(b) HUD may require the owner to terminate the agreement:

(i) Immediately, in the event a default under the Mortgage, Note, Regulatory Agreement, or Subsidy Contract attributable to the management agent occurs;

(ii) Upon 30 days written notice, for failure to comply with the provisions of the Management Certification or other good cause; or

(iii) When HUD takes over as MIP.

NOTE: As a good business practice, the management agreement should always give the owner the ability to terminate the contract for cause, with notice.

(c) If HUD terminates the agreement, the owner will promptly make arrangements for providing management satisfactory to HUD.

(d) HUD's rights and requirements will prevail in the event the management agreement conflicts with them.

(e) The management agent will turn over to the owner all of the project's cash, trust accounts, investments, and records immediately, but in no event more than 30 days after the date the management agreement is terminated.

(3) Prohibited "hold harmless" clause. Management Agreements cannot exempt the agent from all liability for damages and Injuries.

A sample prohibited clause would read:

The owner agrees to hold and save agent harmless from dangers of injuries to persons or property by reason of any cause whatsoever, either in or about the premises or elsewhere, when agent is carrying out the provisions of this agreement, or acting under the express or implied direction of the owner."

To make this clause acceptable:

(a) Delete the underlined words, and

(b) Add "unless such injuries resulted from the agent's gross negligence or willful misconduct" after "direction of the owner".

c. Length/term of the Agreement. The length/term of the Agreement is negotiated between the owner and the management agent. The Loan/Asset Management staff may impose a maximum term on the Management Agreement if the Loan/Asset Management staff approved the agent on a conditional basis.

- (1) The contract may provide for a fixed term or an open-ended term (e.g., automatically renewable or "to remain in effect until cancelled by HUD, the owner, or the agent").
- (2) If the length/term of the Agreement changes, the owner/agent must submit a new Management Certification.

# ILLINOIS HOUSING DEVELOPMENT AUTHORITY (IHDA) MANAGEMENT PLAN GUIDELINES

## IHDA MANAGEMENT PHILOSOPHY

The Management Plan (the “Plan”), which is an attachment to the Management Agreement, is required of every entity that manages an IHDA financed property. The Plan must demonstrate that the Owner/Sponsor and the Managing Agent will consistently implement fair and appropriate housing management practices and comply with applicable program requirements when managing an IHDA financed development.

By responding to the specific questions contained in the following pages, the Managing Agent and/or the Owner address key management and compliance issues. In addition to demonstrating related experience, their responses to these questions are the basis upon which Asset Management Services (AMS) evaluates the Managing Agent’s performance potential.

IHDA views sound management as a crucial element in providing decent housing for the families served by its programs. Striking a balance between the economic and social demands of a development, while trying to achieve a feeling of community and establish good relationships between the managing agent and the residents is no easy task. IHDA recognizes that competent housing management requires an understanding of not only the physical maintenance and fiscal controls, but should also include a socially desirable environment to produce the best possible living conditions. This means that community services and facilities must be provided as well as adequate grievance procedures and efficient physical maintenance of the development.



## **INSTRUCTIONS FOR COMPLETING THE QUESTIONNAIRES AND THE PLAN OUTLINE**

The information requested in the questionnaires and the Plan is required to allow IHDA to gain understanding of the background and qualifications of the managing agent, and to highlight the level of involvement that the sponsor/owner will have in managing the development.

The Plan is a required attachment to any Management Agreement approved by IHDA. It should be as comprehensive as possible. It is not enough to indicate ones' policies with regard to management but should provide detailed explanations as to how each area of management will be handled. It allows the agent an opportunity to show how sound financial management, preventative and corrective maintenance and a good social environment will be achieved. Therefore, the managing agent should not limit their responses to only those items listed in the outline, but is required to cover those items at a minimum and is encouraged to give additional consideration to anything further that he/she feels will be needed at this development.

IHDA views it's Management Philosophy as one that is essential to professionally manage an IHDA financed development as well as conventionally financed apartment developments. Following the order of the outline as described will enable our staff to approve your Management Plan on a timely basis.

### **Each section must be completed:**

- **QUESTIONNAIRE FOR SPONSOR/OWNER (Section A):** should be completed by the owner/developer;
- **QUESTIONNAIRE FOR MANAGING AGENT (Section B):** should be completed by the managing agent;
- **MANAGEMENT PLAN OUTLINE (Section C):** should be completed by the managing agent after consultation with the owner.

## **Section A**

### **QUESTIONNAIRE FOR SPONSOR/OWNERS**

Please address the following questions in detail following the same order as shown below; also indicate those questions that are not applicable in your case.

1. List the names and addresses of all Managing Agents that are currently managing developments sponsored by you. Do you plan to use the same managing agent for this development?
2. Outline your experience and capabilities as a sponsor in providing affordable housing, including any special amenities such as social services that you feel are necessary for the proposed development. List any development experience with IHDA financed projects.
3. Complete the Plan Outline (Section C) if you intend to manage the property yourself. However, if you plan on using a fee agent, then describe the extent of intended personal involvement in operating and managing the development, with a detailed explanation of the division of duties and responsibilities between the agent and the owner.

## **Section B**

### **QUESTIONNAIRE FOR THE MANAGING AGENT**

Please address the following questions in detail following the same order as set out below:

1. Name of company, address, phone number, fax number and e-mail addresses.
2. Type of business; i.e. sole proprietorship, partnership or corporation and the number of years in business, include any state(s) in which you are licensed to operate.
3. Name of principals. Include a resume of each principal or summary detailing prior related experience, particularly in management of affordable housing and management training. List any professional associations or Real Estate Boards to which you belong.
4. Describe the company's organizational structure, including number employed in the following capacities:
  - Supervisory, clerical, maintenance, social services, accounting, and leasing;
  - List minority employees by racial breakdown and the positions they hold with your firm;
  - Name the person responsible for the management division of the firm.
5. Give number, types and location of developments presently under your management, including any IHDA financed developments.
6. List any developments that you have managed where the following occurred: mortgage default, mortgage relief required, or foreclosure, while giving an explanation of the circumstances that led up to such action, and the resolution as applicable.

## **Section C**

### **MANAGEMENT PLAN OUTLINE**

The responses given to this section should explain the policies and procedures that the agent has established to address key areas of managing the development. It should cover the following areas, describing how you intend to implement the methods, procedures and policies necessary for achieving a well-managed development.

Please give your responses using the outline format below:

- I. The relationship between the sponsor and the managing agent:**
  - a. Explain the role and the responsibilities of the sponsor, and his relationship to and delegation of authority to the managing agent;
  - b. The relationship of the sponsor to the on-site project manager, with a clear division of responsibilities for policy and administration;
  - c. Personnel policy and staffing arrangements for site personnel and supervisors;
  - d. Provisions for staff training and development: i.e. in sales/leasing, rental, management and maintenance. (It should not include employee benefits, compensation, or tenant procedures.) **Participation in IHDA training is required annually of all site management personnel, or as needed due to staff turnover.**
  
- II. Procedures for tenant eligibility and processing:**
  - a. Insuring management personnel's familiarity with IHDA or HUD program requirements for income and occupancy limits, and adherence to compliance and regulatory requirements;
  - b. The system used to determine applicant's eligibility, including the procedures utilized for accepting applications, the number of persons reviewing, processing, and approving or rejecting applications. (It should not contain specific Tenant Selection, as this is covered in the Tenant Selection Plan.);
  
- III. Rent Collection policies and procedures:**
  - a. Procedures for rent collections, including accommodations for on-site collections. Describe the system used to record rent payments;
  - b. Follow-up procedures for keeping delinquencies at a minimum (i.e. to collect delinquent rent, serving notices for non-payment of rent and eviction procedures).
  
- IV. Resident/Management Relations:**
  - a. Leasing and tenant orientation procedures including notifying tenants of house or community rules, and conducting move-in inspections;
  - b. Marketing and lease-up policies;
  - c. Referral to social service agencies or services provided by onsite staff, and social programming;
  - d. Method of handling tenant grievances, i.e. what is the on-site manager's role, and who the tenant contacts in case of complaints or issues.
  - e. Procedures for handling tenant work order requests, including off hours emergency notification procedures;
  - f. Provisions for on-site security.

**V. Maintenance and Repairs:**

- a. Procedures for inventory control and servicing of equipment and appliances;
- b. Plans for conducting periodic unit inspections (i.e. for housekeeping or Decent, Safe and Sanitary Inspections) and maintenance of units for move out and re-rental;
- c. Procedures for routine and cycle maintenance and repair program, with special attention to preventative maintenance, and interior and exterior decorating schedules.

**VI. Financial and Accounting procedures, and Reporting System:**

- a. Accounting System for maintaining adequate records and handling necessary forms, vouchers and reports (general ledger system, comprehensive and current written fiscal policies and procedures established) and records management and retention;
- b. Internal controls (i.e. dual control for bank deposits and cash receipts, disbursements, handling petty cash.etc)
- c. Accounts payable and receivable procedures, including division of duties and responsibilities between on-site and corporate personnel;
- d. Consistency of accounting and purchasing procedures with IHDA accounting manual;
- e. Familiarity with weekly, monthly, quarterly and annual report requirements;

**As applicable:** Income Integration Plan for multi-building developments having units at both market and affordable rates that has been approved by an IHDA program officer. The Income Integration Plan should provide the approximate percentage of units in each building to be designated for low and very low-income tenants.

July 2019

**MANAGEMENT FEE BID FORM**

The monthly fee for management services will be a sum equal to \_\_\_\_\_ percent of the gross collections, as defined in the IHDA Form Management Agreement. The fee for management services will be treated as a project expense.

If you intend to charge additional fees for various transactions or for any other items, describe each charge below and indicate the fee:

_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

If you intend to expense any firm salaries or portion of salaries to the project budget [Should we include the project budgets as attachments to the RFP? If so, should we say “other than those which are specifically included in the Project Budgets”?], please specify the title, annual salary, and amount you intend to charge to the project each month.

Title _____	Salary _____	Amt to Budget _____
Title _____	Salary _____	Amt to Budget _____
Title _____	Salary _____	Amt to Budget _____
Title _____	Salary _____	Amt to Budget _____