

MANAGEMENT AGREEMENT CHECKLIST

Project Name: _____ HCD Loan # _____

Sponsor: _____ Agent: _____

This section of the checklist is included to assist sponsors in clarifying and implementing policies and requirements for the management agreement contract. It also functions to assist HCD in determining whether your management agreement is sufficient. As you complete the project's management agreement, please identify in the space provided, the page number where each topic is addressed in the management agreement. Upon completion of the original/revised management agreement contract, submit it along with the checklist, to the Department's (HCD) Asset Management and Compliance section for review and approval.

RESIDENTIAL MANAGEMENT CONTRACT

This contract is made this _____ day of _____, by and between _____ (the "Sponsor"), and _____ (the "Agent") to provide management services for the rental housing development (the "Development") consisting of land, buildings, and other improvements as noted below and further described in the attached Exhibit A, incorporated herein by this reference.

Development Name: _____
Project Address: _____
City: _____ State: _____ Zip: _____
HCD Contract/Loan#: _____ # of Units: _____
PAGE# _____

This contract shall become effective when it is approved and executed by the California Department of Housing and Community Development ("HCD"), which approval shall be noted on the last page of this contract. **PAGE#** _____

1. **Appointment and Acceptance.** **PAGE#** _____ Sponsor hereby appoints Agent as exclusive agent for the management of Development and Agent hereby accepts the appointment, both appointment and acceptance being subject to the terms and conditions set forth in this contract.

2. **Definitions.** **PAGE#** _____
 - a. "Agent" means a broker or corporation licensed by the California Department of Real Estate.
 - b. "Principal Parties" means Sponsor and Agent.
 - c. "Residential Lease" means the HCD approved residential lease, a copy of which shall be executed by Agent on behalf of Sponsor, and by each household.

3. **Agent's Compensation.** **PAGE#** _____ Agent shall be compensated for its services under this contract as shown in the attached Exhibit B incorporated herein by this reference.

4. **Low Income Housing Tax Credit Program.** ("LIHTC") **PAGE#** _____ If this Development is an LIHTC program (Section 42 of the Internal Revenue Code of 1986) Agent agrees and understands that they are obliged to be completely informed of the requirements of such program, as interpreted

and enforced by the California Tax Credit Allocation Committee "TCAC." Agent further understands that it is their obligation to be thoroughly trained in meeting such requirements, and to adhere strictly to such requirements and to the applicable rules and regulations issued by TCAC. Agent's failure to comply with such requirements, rules and regulations will cause grievous injury to the Sponsor. Accordingly, and notwithstanding any other provision herein, Agent's failure to so comply is sufficient cause to Sponsor to terminate this contract with 10 days written notice.

5. **Term. PAGE#**_____ The term of this contract shall commence on the date approved by HCD and shall terminate on _____, which date is not more than five years from the date of approval. This contract may be terminated:
- a. By either the Sponsor or Agent upon 30 days notice, HCD approval must be obtained before notice is given.
 - b. In the event that a petition in bankruptcy is filed by or against one of the principal parties, or that one of the principal parties seeks relief under any of the chapters of the Federal Bankruptcy Act, or in the event that one of the principal parties makes an assignment for the benefit of creditors, whether by common law assignment or pursuant to specific provisions of state or federal law, the other principal party may terminate this contract without notice to the first principal party, provided that prompt written notice of such termination is given to HCD.
 - c. It is expressly understood and agreed by and between the principal parties that the (Fill In) ("Owner") shall terminate this contract as directed by the California Department of Housing and Community Development ("HCD") upon a determination by HCD that (Fill In) (the "Agent") has not or is not complying with MHP program requirements. Said termination of this contract shall be effective at the end of any calendar month on a 30 days' advance written notice from Owner to Agent, except that in the event of a default by Owner under the promissory note, deed of trust, rehabilitation loan agreement, or regulatory agreement, HCD may terminate this contract immediately upon the issuance of a notice of cancellation to each of the principal parties.
6. **Employees. PAGE#**_____ The number of employees, their job descriptions, and salaries, shall be determined by Agent using as a general guide the provisions of the Management Plan developed for the project and amended from time to time, and approved by HCD, which Plan is incorporated herein by this reference. These personnel shall be hired, supervised, and discharged by Agent. Agent shall be responsible for compliance with Title I, Section 17909 of the California Code of Regulations, which requires that an owner of an apartment house containing more than four, but less than 16 apartment units must either reside on the premises or must post the premises with the name and address of the owner or owner's agent who is in charge of the development. If there are 16 or more units in the development, a resident manager must reside on the premises and be in charge of their operation.
7. **Transfer of Records and Accounts. PAGE#**_____ Upon termination of the contract for any reason, the following procedures shall apply:
- a. The accounting records of the Development, even if maintained and housed at the office of the Agent, shall be deemed to be the official records and property of the Sponsor. All such records shall be turned over to the Sponsor immediately upon termination of the contract or whenever a change in agent occurs. The records include, but are not limited to, resident and project files, the general ledger, all original books of entry, invoices, canceled checks, payroll records, and contracts.
 - b. The Agent shall retain for 3 years copies of trust records and other pertinent documents (as required by Business and Professions Code Section 10148).

- c. All cash, bank accounts, and trust accounts must be accounted for in writing and turned over to the Sponsor or its representative and approved by HCD within five working days after the termination of this contract.
 - d. Sponsor is required by HCD to have all accounts verified for their accuracy by a certified public accountant after receipt of the records. Verification shall take place within a time period to be specified by HCD at the time of the approval of the new Agent. The Agent agrees to cooperate with the Sponsor and HCD to satisfy this requirement.
8. **Resident Selection/Affirmative Marketing Plan. PAGE#_____** Agent and Sponsor agree to cooperate in the implementation of the resident selection and affirmative marketing provisions of the management plan. In carrying out these provisions, Agent shall:
- a. Lease units in compliance with the unit mix including provision for any special needs such as elderly or adapted units, as prescribed in Exhibit B and C of the Regulatory Agreement.
 - b. Assure that occupancy shall be open to all, regardless of race, color, ancestry, religion, national origin, sex, marital status, children, disability, or other arbitrary factors.
 - c. Assure that all advertising, including letterheads, brochures, and media advertising, shall include a reference to "Equal Housing Opportunity."
 - d. Where a significant number of persons in the community have limited fluency in the English language, provide publications, information brochures, and leases in the native language of such persons.
 - e. Notify applicants of their eligibility status, and advise rejected or ineligible applicants of the right to appeal by providing them with a copy of the Grievance and Appeal Procedure that is a part of the management plan.
 - f. Assure that resident selection is carried out without favoritism or partiality and that the public interest is served at all times.
 - g. Give each resident selected, at the time of acceptance, a written copy of the approved MHP Grievance and Appeal Procedure as an attachment to the lease.
 - h. Adhere to the Housing First guidelines, regulations and statute as applicable.
9. **Compliance with Project Contracts and Procedures. PAGE#_____** Sponsor has entered into a Regulatory Agreement with HCD governing the operations, management and maintenance of the Development. These documents are incorporated herein by this reference, and the Agent agrees to comply with them.
10. **Collection of Rents and Other Receipts. PAGE#_____** Agent shall collect when due all rents, charges, and other amounts receivable in connection with the management and operation of the Development. Such receipts shall be deposited in the General Operating Account.
11. **Accounts. PAGE#_____** Agent shall establish separate accounts as trustee for the Sponsor for project funds. These accounts shall be the General Operating Account, the Replacement Reserve Account, the Security Deposit Account, the Operating Reserve Account (which may be a sub-account within the General Operating Account), and any other accounts be required by the Regulatory Agreement. Funds from these accounts shall be kept in depositories whose deposits are insured by an agency of the federal government or other comparable federally insured program.
- a. **General Operating Account: PAGE#_____** The General Operating Account shall contain the gross operating receipts received by the Agent or Sponsor and/or its

representatives pursuant to Paragraphs 9 and 26 of this contract. These funds shall be deposited promptly in the Trust Account.

- b. **Operating Reserve Account PAGE#_____**: Agent shall maintain an Operating Reserve Account from gross operating receipts. This fund shall be maintained in a trust account in the sponsor's name or a sub account of the general operating account. Deposits of _____ shall be made to the Operating Reserve Account each month on or before the 20th day of the month.
- c. **Replacement Reserve Account: PAGE#_____** Agent shall maintain a Replacement Reserve Account from gross operating receipts. This fund shall be maintained in a trust account established in the Sponsor, subject to the direction of HCD. Deposits of \$ _____ shall be made to the Replacement Reserve Account each month on or before the 20th day of the month. Pursuant to the Regulatory Agreement, the adequacy of the monthly deposits shall be reviewed annually in accordance with the annual operating budget approved by HCD. At that time, the amount of these deposits may be adjusted. All interest or other income earned by the Replacement Reserve Account shall be applied solely to the purposes of the Fund, and disbursements from the Fund shall be made only upon the approval or direction of HCD.
- d. **Security Deposit Account: PAGE#_____** Agent shall collect security deposits in accordance with requirements of the residential lease. In collecting, handling, and disbursing these funds, Agent shall comply with the requirements of the California Civil Code, Section 1950.5 and Business and Professions Code Section 10145. These funds shall be kept in an account that is insured an agency of the federal government or other comparable federal insured program.
They shall at all times be equal to the total amount held by the Agent for the tenant. If interest accrues to the Security Deposit Account, it shall be disbursed as required in the Development's Management Plan. No interest shall accrue to the benefit of the Agent.

12. **Disbursements. PAGE#_____** Agent may disburse funds from the accounts described in paragraph 10 of this contract only for the purposes noted below. Agent shall draw no checks nor incur any obligation in an amount exceeding \$ _____, without the express written permission of Sponsor, except as necessary for emergency repairs required to avoid injury to persons or property.

- a. **General Operating Account: PAGE#_____** Disbursements may be made from this account in accordance with the budget, and shall be disbursed, applied, or reserved and set aside for payment when due, in the following priority, to the extent available:
 - (1) salaries, wages, and any other compensation due and payable to the employees or agents of the Sponsor employed on site in connection with the maintenance, administration or operation of the Development, along with all withholding taxes, insurance premiums, Social Security payments and other payroll taxes or payments required in connection with such employees;
 - (2) all charges incurred in the operation of the Development in connection with utilities, real estate taxes and assessments, and liability, fire and other hazard insurance;
 - (3) payments of required interest, principal, ground lease, rent payments as required by the lease and approved by HCD, and impounds, fees, and charges, if any to lien holders on the property approved by HCD including the HCD loan;
 - (4) all other expenses incurred to cover operating costs, including the fee of the Agent and any extraordinary expenses, in accordance with the approved annual operating budget of the Development or as otherwise approved in advance by HCD;
 - (5) deposits to the required reserve accounts;
 - (6) distributions in accordance with the Regulatory Agreement;
 - (7) HCD loan principal prepayments and incentive payments to the Sponsor, in accordance with the promissory note evidencing the HCD loan; and

- (8) residual receipts payment pursuant to the Regulatory Agreement. The Sponsor may depart from the foregoing priorities of payment only upon the express written approval of HCD.
- b. **Operating Reserve Account: PAGE# _____** Funds may be transferred from this account only to alleviate cash shortages resulting from unanticipated and unusually high maintenance expenses, seasonal fluctuations in utility costs, abnormally high vacancies and other expenses that vary seasonally or from month to month. Agent shall not withdraw or transfer funds from this account for any other purpose without prior written approval of the Department.
- c. **Replacement Reserve Account: PAGE# _____** Agent may make disbursements from this account only with the prior written approval of HCD.
- d. **Security Deposit Account: PAGE# _____** Disbursements may be made from this account to:
- (1) pay the cost of any unpaid rent, damage, or unreasonable wear and tear caused by the resident, after the resident vacates the unit, or to reimburse the General Operating Account for payment of these costs; or
 - (2) return to the resident upon termination of the tenancy the portion of the deposit not used in accordance with 1) above.
13. **Insurance. PAGE# _____** If the Sponsor does not obtain insurance, the Agent shall obtain and keep in effect at all times, insurance covering the Development and its operations in accordance with the Regulatory Agreement. The companies, from whom the insurance policies are purchased, the conditions in the contract of insurance, the amounts of coverage, and the beneficiaries of each policy, shall be determined by the Sponsor and approved by HCD. Agent shall investigate and immediately furnish the Sponsor and HCD with full reports of all accidents occurring on or about the premises of the Development or in connection with the operation of the Development, or any claims or potential claims for damage arising out of such accidents, and the Agent shall cooperate with the Sponsor, HCD and insurers in the investigations and settlement thereof.
PAGE# _____ Submit a copy of the property and liability insurance to the Department.
14. **Records and Reports. PAGE# _____** In addition to requirements specified elsewhere in this contract, Agent shall have the following responsibilities with respect to records and reports:
- a. Agent shall establish and maintain a comprehensive system of records, books and accounts in a manner approved by HCD after consultation with the Sponsor. All records, books, and accounts shall be subject to examination during regular hours of business by any authorized representative of the Sponsor or HCD.
 - b. Agent shall make additional reports of income and expenses in a time and manner satisfactory to the Sponsor and consistent with the Regulatory Agreement.
 - c. Agent shall at all times keep all financial records, books, accounts, and other financial material relating to the operation of the Development in safe condition and accessible to the Sponsor and HCD on one day's notice.
 - d. Agent shall prepare and submit operating reports (**Special Needs, Supportive Housing, Affirmative Fair Marketing**) to the Sponsor and HCD in a form and time frame to be determined by HCD.
 - e. Agent shall prepare and submit an annual report on a form designated by HCD, and if required by HCD, shall cause the financial records of the Development to be audited annually by an independent certified public accountant licensed in California and approved by the Sponsor and HCD.

15. **Annual Budget. PAGE#**_____ Agent shall submit to the Sponsor and HCD for approval, a proposed operating budget for the Development. The proposed budget shall be on a form approved by HCD, and shall be submitted not less than 60 days prior to the beginning of each fiscal year. The proposed budget shall set forth the anticipated gross income of the Development and a detailed estimate of all expenses of the Development. The budget shall cover generally those expenses listed in paragraph 11 of this contract. Upon approval by the Sponsor and HCD, this proposed budget shall be the operating budget for the next fiscal year of the Development.

16. **Maintenance and Repair. PAGE#**_____ Agent shall cause the Development to be maintained and repaired in a condition at all times acceptable to the Sponsor and HCD. Obligations under this paragraph shall include but not be limited to cleaning, painting, decorating, plumbing, carpentry, grounds care, and such other maintenance and repairs as may be necessary, subject to (1) any limitations imposed by the Sponsor with HCD's approval; and (2) to those limitations contained herein.

Incident thereto, the following provisions shall apply:

- a. A Preventive Maintenance Schedule shall be developed by Agent for approval by the Sponsor and HCD. This Schedule shall be incorporated into the Management Plan, which Plan shall be updated annually and submitted to HCD for approval in conjunction with the review of the annual operating budget.
- b. Subject to the Sponsor's prior approval, Agent shall contract with qualified independent contractors for the maintenance and repair of items beyond the capability of regular maintenance employees.
- c. Agent shall systematically and promptly receive and investigate all requests for maintenance or repair from residents, take action thereon as may be justified, and keep records of the same. Agent shall inform tenants of procedures to obtain maintenance services if emergency occurs after normal office hours. Agent shall maintain a log book containing all service requests and maintenance repairs provided, copies of which shall be subject to periodic inspection by the Sponsor and HCD.
- d. Subject to the spending limitations set out elsewhere in this contract, Agent is authorized to purchase all materials, equipment, tools, appliances, supplies, and services necessary to ensure proper maintenance and repair of the Development.
- e. Sponsor shall furnish Agent with a complete set of plans and specifications accurately reflecting the Development as built and copies of all guarantees and warranties pertinent to construction, fixtures, and equipment. With the aid of this information and inspection by competent personnel, Agent shall familiarize itself with the character, location, construction, layout, plan, and operation of the Development and especially of the electrical, heating, plumbing, air conditioning and ventilating systems, the elevators, and all other mechanical equipment and systems.

17. **Rent Adjustments. PAGE#**_____ Agent will adjust the rents for the HCD assisted units no more than once each year in accordance with HCD approved state median income "SMI" and Area Median Income "AMI" limits. Gross rents shall be adjusted to no more than 30% of such AMI and SMI limits. Gross rent includes the rent before adjustment for utility allowance. For Units receiving HUD Section 8 or other similar rental assistance, the rules of the rental assistance program pertaining to rent increases will prevail for as long as the rental assistance remains in place. **For over-income tenants, agent shall consult the Regulatory Agreement that pertains to the project using the most restrictive requirements to establish the adjusted rents. The agent must also ensure that rents comply with the LITHC guidelines.**

18. **Utilities and Services. PAGE#_____** Agent shall make arrangements for all common area utilities, sewage, rubbish collection, vermin extermination, decorating, and laundry equipment. Agent has the authority to execute such contracts on behalf of Sponsor as may be necessary to secure such services, subject to the limitations described in paragraph 11 of this contract.
19. **Enforcement of Residential Lease. PAGE#_____** Agent is responsible for securing the full compliance of each resident with the terms of the residential lease, the standard language of which is incorporated herein by this reference.
20. **Orientation/Training. PAGE#_____** Agent and appropriate personnel shall attend orientation or training sessions as may be required by the Sponsor and HCD.
21. **Resident Counseling. PAGE#_____** Agent shall, consistent with sound management of the Development, counsel residents and make referrals to available community social service agencies in cases of financial hardship or under similar circumstances that could lead to termination of a tenancy or eviction.
22. **Termination of Tenancies or Evictions. PAGE#_____** Agent may take action to terminate or evict any tenants where in Agent's judgment, sufficient cause for such termination or eviction exists under the terms of the residential lease. Agent is authorized to retain legal counsel to bring action necessary to carry out the decision to terminate or evict. Agent shall keep Sponsor informed of the progress of such actions.
23. **Compliance with Government Orders. PAGE#_____** Agent shall take such action as may be necessary to comply promptly with all HCD and other governmental orders or requirements affecting the Development, whether imposed by federal, state, county, or municipal authority, subject however, to the limitations stated in paragraph 11 of this contract. Agent shall take no action to comply with such orders or requirements if Sponsor is contesting, or has informed Agent of its intention to contest, any such orders or requirements within 72 hours of the time of their receipt by Agent.
24. **Nondiscrimination. PAGE#_____** In the performance of its obligations under this contract, Agent shall comply with the provisions of all federal, state, or local laws prohibiting discrimination in housing on the basis of race, color, ancestry, religion, national origin, sex, marital status, children, or disability, including Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and the regulations issued pursuant thereto (24 CFR Part I); Executive Order 11063 and the regulations issued pursuant thereto (25 CFR 570.601); and Title VIII of the 1968 Civil Rights Act (Public Law 90-384).
25. **Fidelity Bond. PAGE#_____** Agent shall furnish, at its own expense, a fidelity bond, copy attached as Exhibit C, incorporated herein by this reference. The bond shall be in an amount equal to or greater than the total of all trust accounts maintained by the Agent, or a lesser amount if approved by HCD.
26. **Inspection of Units. PAGE#_____** Agent shall inspect all units in the Development at least annually during the recertification process. HCD shall have the right to inspect any part of the Development upon advance notice to residents as provided in the residential lease and subject to law.
27. **Bids, Discounts, Rebates, and Commissions. PAGE#_____** Agent shall obtain contracts, materials, supplies, and services on the most advantageous terms available to the Development, and shall solicit three formal bids for each major item or service required. Agent shall secure and credit to the General Operating Account all discounts, rebates, or commissions obtainable with respect to purchases, service contracts, and all other transactions on Sponsor's behalf.
28. **Interpretative Provisions: PAGE#_____**
 - a. At all times, this contract shall be subject and subordinate to all rights of HCD. It shall be enforceable by and constitute a binding obligation upon the principal parties and their

respective successors and assigns. To the extent that this contract confers rights upon HCD, it is deemed to be enforceable by HCD in the same manner and with the same effect as though HCD were a principal party to the contract, except that it shall not create liabilities or confer obligations upon HCD.

- b. This contract constitutes the entire agreement between the Sponsor and the Agent with respect to the management and operations of the Development and no change will be valid unless made by supplemental written contract, approved and executed by the principal parties and HCD.
- c. This contract has been executed in several counterparts, each of which shall constitute a complete original contract, which may be introduced in evidence or used for any other purpose without production of any of the other counterparts.

IN WITNESS WHEREOF, the principal parties, by their duly authorized officers, have executed this contract on the date written above.

SPONSOR

AGENT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B

AGENT'S COMPENSATION

Agent's services to be covered by the management fee include the following:

- Overhead
- Supervision
- Preparation of financial statements and reports as required
- Payroll processing
- Computer processing
- Project bookkeeping and accounts

Services not covered by the fee include the following:

- On-site telephone
- Other _____

Agent's Compensation. Agent shall be compensated for its services under this contract by a monthly fee to be paid out of the General Operating Account. The monthly fee shall be \$ _____ per unit per month.

Initialed:

Agent: _____

Sponsor: _____

HCD: _____

EXHIBIT C
FIDELITY BOND