

HARRIS COUNTY HOUSING AUTHORITY

8933 Interchange Houston, Texas 77054 | 713.669-4514 P

AMENDMENT OF SOLICITATION

ADDENDUM # 1

DATE: 08-01-18

ISSUED BY: Harris County Housing Authority

AMENDMENT TO SOLICITATION NUMBER: **RFP#18-07**

Property Management Services Cypresswood Estates

THE DATE AND TIME SPECIFIED FOR RECEIPT OF PROPOSALS REMAINS AS **August 13th, 2018, 2:00 PM CST.**

THE SOLICITATION MENTIONED ABOVE IS HEREBY AMENDED. PROPOSERS MUST ACKNOWLEDGE RECEIPT OF THIS AMENDMENT PRIOR TO THE HOUR AND DATE SPECIFIED FOR RECEIPT OF PROPOSALS BY SIGNING THIS FORM BELOW.

ITEM 1: Remove “**Attachment K** – Sample Management Agreement – Management Agreement” and insert the revised “**Attachment K** – Sample Management Agreement – Management Agreement” dated July 31, 2018 (see attached).

Proposer/Respondent

Date

Signature

ATTACHMENT K

SAMPLE MANAGEMENT AGREEMENT

Revised 8-1-18

MANAGEMENT AGREEMENT

Revised 8-1-18

THIS MANAGEMENT AGREEMENT ("Agreement") is made as of September __, 2018, by and between HCHA CYPRESSWOOD ESTATES, LLC, a Texas liability company ("Owner"), and _____ ("Manager").

A. Owner is the owner of an 88-unit multifamily seniors apartment complex intended for rental to persons of low and moderate income, known as Cypresswood Estates, and located in Harris County, Texas (the "Apartment Complex").

B. Owner is a wholly owned subsidiary of the Harris County Housing Authority ("HCHA").

C. Partial funding for the Apartment Complex came from the Harris County Community Services Department in NSP and CDBG grants to HCHA, which grants place restrictions on qualified tenants for the Apartment Complex.

D. The Apartment Complex was built as a LEED Platinum project, and Owner wants to maintain such certification.

E. Manager is engaged in the business of property management.

F. Owner desires to engage Manager as property manager under the terms set forth in this Agreement.

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

1. Definitions.

"Affiliate" means any person that directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a designated Person.

"Budget" shall mean the Budget for the Apartment Complex as prepared by Manager and approved by Owner from time to time pursuant to Section 6(e).

"CDBG" means Community Development Block Grant to HCHA from the Harris County Community Services Department.

"Confidential Information" shall mean the books, records, business practices, methods of operations, computer software, financial models, financial information, policies and procedures, and all other information relating to Owner and the Apartment Complex (including any such information relating to the Apartment Complex generated by Manager), which is not available to the public.

"Excluded Revenues" means any revenues from condemnation or casualty proceeds, any cash advances from Owner or any partner of Owner, loss of rental insurance; refunds or rebates from suppliers

or vendors, revenue from the sale of any personal or real property of Owner, late charges, cleaning fees, pet fees, deposits, or from any source other than the customary operations of the Apartment Complex.

"Grants" means the NSP and CDBG grants to HCHA for the construction of the Apartment Project from the Harris County Community Services Department.

"Gross Operating Revenues" means the actual monthly cash collections from the customary operations of the Apartment Complex consisting of rental, vending machine and laundry room receipts net of any costs or expenses, forfeited or applied deposits, rent claim settlements net of any collection fees, lease termination or modification payments, and other operating receipts, excluding applicable sales tax and refundable deposits; Gross Operating Revenues shall not include Excluded Revenues.

"HUD" means the US Department of Housing and Urban Development.

"NSP" means Neighborhood Stabilization Program grant to HCHA from the Harris County Community Services Department.

"Person" means any individual, partnership, corporation, trust, limited liability company, governmental authority, or other entity.

"Project Lender" shall mean any Person in its capacity as a holder of a loan on the Apartment Complex.

"Project Loans" shall mean the loans and indebtedness of the Owner to the Project Lender(s).

"Regulatory Agreement" means, to the extent applicable, and collectively, any regulatory agreements and/or any declaration of covenants and restrictions heretofore or hereafter entered into between the Owner and/or HCHA and any applicable government agency setting forth certain terms and conditions under which the Apartment Complex is to be operated, including without limitation the Grants.

"Reserve For Replacements" means the cash funded reserve for replacements required by any Project Lender in connection with the Project Loans or Harris County Community Services Department in connection with the Grants, which shall be used exclusively for replacement expenditures (and not operational expenditures) for the Apartment Complex.

2. Appointment of Manager. On and subject to the terms and conditions of this Agreement, Owner hereby retains Manager commencing on _____, 2019 (the "Commencement Date") to market, manage and lease the Apartment Complex.

3. Term. This Agreement shall commence on the Commencement Date and, subject to Section 11 of this Agreement, shall expire two (2) years following the Effective Date (the "Original Term"), but, unless terminated in accordance with the provisions of such Section II, may be extended for up to an additional two (2) year term at the sole option of Owner. The terms and conditions during any renewal term shall be the same as the terms and conditions during the original term.

4. Management Fees. In consideration of the performance by Manager of its duties and

obligations hereunder, Owner shall pay to Manager a management fee (“Management Fee”) equal 5% of monthly Gross Operating Revenues, which fee is calculated with respect to the preceding calendar month and payable on the tenth day of each calendar month, beginning with the month after the month during which the Commencement Date occurs. Manager shall submit to Owner an invoice detailing the calculation of the Management Fee each month, no later than the fifth day of the next succeeding month. If the first or last month of this Agreement is not a complete calendar month, the Management Fee for such month shall be calculated on the basis of Gross Operating Revenues for the entire month, and the amount payable for such month shall then be prorated based on the number of days during such month that this Agreement was in effect.

All rebates, discounts, or commissions collected by the Manager (except a commission pursuant to the terms of this Agreement) or credited to the Manager's use, which relate to the purchasing of supplies or the rendering of services to or for the Apartment Complex, shall be fully disclosed to Owner and that part of any rebate, discount or commission that is allocable to the purchasing of supplies or the rendering of services to or for the Apartment Complex shall be credited to the Owner's account.

5. Authority and Responsibilities of Manager.

- (a) Independent Contractor. In the performance of its duties hereunder, the Manager shall be and act as an independent contractor, with the sole duty to supervise, manage, operate, control and direct performance of the details of its duties incident to the specified duties and obligations hereunder, subject to the rights of the Owner, as described herein. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, employment relationship, or otherwise to create any liability for one party with respect to indebtedness, liabilities or obligations of the other party except as otherwise may be expressly set forth herein.
- (b) Standard of Care. Manager shall perform its duties and obligations in a professional, competent, businesslike and efficient manner as would a first-class property manager of apartment projects similar to the Apartment Complex.
- (c) Depository Accounts. All rents and other revenue from the Apartment Complex shall be deposited by Manager into one or more deposit accounts designated by Owner and insured by the Federal Deposit Insurance Corporation (each a "Depository Account") within one business day of receipt. The Depository Account shall be the sole and exclusive property of Owner, and Manager shall retain no interest therein. Manager shall not commingle the Depository Account with any other funds. Checks may be drawn upon such Depository Account only by persons authorized by Owner in writing to sign checks, at least one of whom shall be a designee of Manager and one a designee of Owner. No loans shall be made from the Depository Account. Manager shall not use a "standardized clearing account" for any Depository Account. The Depository Account shall be established in the name of the Manager to be held in trust for the Owner.

- (c) Security Deposits. Manager shall deposit and maintain all security deposits in a

separate account designated by Owner and insured by the Federal Deposit Insurance Corporation (the "Security Account"). Manager shall fully fund all security deposits into the Security Account within one business day of receipt, notwithstanding whether local law requires full funding. The Security Account shall be a segregated account that is distinct from the Depository Account and any other accounts relating to the Apartment Complex or the Manager. The Security Account shall be the sole and exclusive property of Owner, and Manager shall retain no interest therein. Manager shall not commingle the Security Account with any other funds. Checks may be drawn upon the Security Account only by persons authorized by Owner in writing to sign checks, at least one of whom shall be a designee of Manager and one a designee of Owner. No loans shall be made from the Security Account. Manager shall not use a "standardized clearing account" for the Security Account. The Security Account shall be established in the name of the Manager to be held in trust for the Owner.

- (e) Budgets. Manager shall prepare and present to Owner in a format approved by Owner, prior to the Commencement Date and annually thereafter, by November 15, annual operating and capital budgets for the following calendar year for the Apartment Complex; which once approved by Owner and Manager shall be the budget ("Budget"). Except in cases of emergency, without the written approval of Owner, Manager shall not incur any expenses that are not included within the Budget for the current year. Once a Budget is approved by Owner, any variations or changes must be approved by Owner in writing.
- (f) Leasing, Collection of Rents, Etc.
 - (i) Manager shall use its best efforts, consistent with the standard of care set forth herein, to lease units in the Apartment Complex in accordance with the Regulatory Agreement requirements and the requirements of the Grants, obtain and retain residents and maximize Gross Operating Revenues.
 - (ii) Manager shall market the Apartment Complex taking every reasonable effort to obtain suitable Residents when vacancies occur. This shall be done as expeditiously as possible to ensure units do not remain vacant more than 25 days and to minimize loss of revenue. Occupancy of the Apartment Complex shall be limited to income-qualified seniors. The criteria governing eligibility of Residents for admission to any assisted units and the conditions of continued occupancy shall be in accordance with the Regulatory Agreement.
 - (iii) Manager shall rent apartments in the Apartment Complex at rates approved by Owner.
 - (iv) Manager shall sign apartment leases in its capacity as property manager hereunder. Manager shall only sign leases in the form of lease approved by Owner. Manager shall not enter into any lease which has a term greater

than 12 months or less than 6 months.

- (v) Manager shall collect rents, security, deposits and other charges payable by tenants in accordance with the tenant leases, and shall collect Gross Operating Revenues due to the Owner with respect to the Apartment Complex from all other sources, and shall deposit all such monies received immediately upon receipt as provided in Section 6(c) and Section 6(d) of this Agreement. If Manager receives Excluded Revenues, Manager shall immediately deposit same in an account designated by Owner.
- (vi) Manager shall pay, in accordance with the Budget, all debt service, monthly bills and insurance premiums on the Apartment Complex from the Depository Account. Manager shall also transfer funds from the Depository Account into the account designated by Owner as the Reserve For Replacements account. Manager is not authorized to pay for items outside the approved Budget without Owner's written approval. Manager may request advances from Owner from the Operating Reserve, which shall be paid by Owner in its sole discretion. Subject to any Project Loan restrictions, Manager may advance funds from the Lease-Up Reserve to fund operating cost deficits but shall immediately notify Owner of any withdrawals from the Lease-up Reserve.
- (vii) Manager shall, at Owner's expense, terminate leases, evict tenants, institute and settle suits for delinquent payments as Manager deems advisable, subject to other provisions of this Agreement. In connection therewith, Manager may, at Owner's expense from available cash flow, as limited by the provisions of Section 6(o) of this Agreement, consult and retain legal counsel.
- (viii) Manager shall, on the twentieth (20th) day of each month, pay Owner an amount equal to Gross Operating Revenues, less amounts paid for approved operating expenses, pursuant to the Budget, of the Apartment Complex in accordance with this Agreement.
- (ix) Manager acknowledges the Owner's objective of complying with the Grants and acknowledges that tenant qualifications and rents on some of the units in the Apartment Complex are restricted as set out in **Exhibit A**.
- (x) Manager agrees to operate the Apartment Complex in a manner which meets the Regulatory Requirements (including the Grants) and the LEED Platinum continuing certification requirements, including but not limited to the following:
 - (A) causing the apartment units in the Apartment Complex to be leased to suitable tenants who comply with all Regulatory Requirements;

- (B) obtaining from all tenants in the Apartment Complex the right to receive annual reports from such tenants concerning their incomes and family sizes and any other information required by the Regulatory Requirements;
 - (C) execution of a lease for any rental unit in respect of which Grants funding has been allocated to the Owner only upon first obtaining certification from the tenant, and such other information as may be necessary for the Manager to determine that the tenant satisfies the income criteria for low-income housing;
 - (D) preparation for Owner's signature, and filing in a proper manner, any reports and/or certifications required by any Project Lender, HUD and/or Harris County Community Services Department;
 - (E) causing the Apartment Complex to be operated in a manner that complies with all other statutes, regulations, and agreements which must be complied with in order for Owner to comply with the Grants;
 - (F) causing the Apartment Complex to be operated in a manner that maintains the LEED Platinum certification for the Apartment Complex;
- (xi) Manager acknowledges receipt of the Project's Promissory Note, and the NSP and CDBG grant agreements between HCHA and Harris County Community Services Department, and to comply with the requirements thereof with respect to reporting, leasing, funding, and payments. Manager agrees to comply with the terms and conditions set forth in the most current HUD Compliance Manual, as same shall be revised or amended from time to time; and
 - (xii) The responsibilities and services included in this Section 6 as part of Manager's duties shall not entitle Manager to any additional compensation over and above the Management Fee. Manager shall not be entitled to any compensation based upon any Apartment Complex financing or sale of the Apartment Complex, unless Manager is engaged pursuant to a separate agreement approved in writing by Owner to provide brokerage services in connection therewith, in which case Manager's right to compensation for Apartment Complex financing or sale shall be based upon such separate agreement.
- (g) Repair, Maintenance, and Service.
 - (i) Manager shall maintain the Apartment Complex in good repair and condition, consistent with the standard of care set forth herein, the Budget

and maintaining LEED Platinum certification. Manager shall make or cause to be made all necessary repairs and alterations, purchase required supplies and materials in accordance with the Budget and pay all bills, accounts, and indebtedness's relative thereto. Manager agrees to secure the prior written approval of Owner on all expenditures in excess of Five Thousand Dollars (\$5,000.00) for any one item, except monthly or recurring operating charges and/or emergency repairs in excess of the maximum, if, in the opinion of Manager, such repairs are necessary to protect and preserve the Apartment Complex from damage or to maintain the services to the lessees as called for in their leases. If Owner doesn't reject the expenditure approval within 5 business day of the request, such request shall be deemed as approved.

(ii) Subject to the other terms and conditions of this Agreement, Manager in its capacity hereunder shall execute any necessary contracts for electricity, gas, telephone, television, vermin or pest extermination and any other services which are necessary to properly maintain the Apartment Complex consistent with the Budget. Manager shall, in Owner's name and at Owner's expense, out of available cash flow, hire and discharge independent contractors for the repair, and maintenance of the Apartment Complex. Other than tenant leases, which Manager is authorized to execute hereunder, Manager shall not, without the prior written consent of the Owner, enter into any contract in name of Owner which may not be terminated without payment of penalty or premium with thirty (30) days notice. Manager shall act at arm's length with all contractors and shall employ no Affiliates of Manager without the prior written consent of the Owner.

(h) Loans, Insurance. To the extent made possible from revenues generated by the Apartment Complex or other funds of the Owner, Manager is hereby instructed and authorized to service all loans and mortgages on the Apartment Complex, pay all applicable real estate and personal property taxes (if any), licenses, and fees; and, to pay from Owner's funds such insurance premiums as requested by Owner under Section 6(k) hereof.

(i) Manager's Employees. Manager shall have in its employ at all times a sufficient number of employees to enable it to professionally manage the Apartment Complex in accordance with the terms of this Agreement. Manager shall prepare, execute and file all forms, reports, and returns required by applicable laws. Manager shall hire, supervise, direct, and discharge all employees and/or independent contractors required for the operation, leasing, management, and maintenance of the Apartment Complex, except that Owner shall have the right to approve, or request removal of, the on-site manager. The compensation to be paid employees and independent contractors shall be competitive in the employment market. All employees shall be included in Manager's Workers Compensation Policy. Reports of withholding,

social security, and all other payroll taxes shall be made by Manager under Manager's account number. All reasonable payroll costs for on-site employees shall be at Owner's expense pursuant to the Budget. However, Owner shall not pay or reimburse Manager for all or any part of Manager's general, administrative and overhead expenses, including salaries and payroll expenses of personnel of Manager not working on-site. All matters pertaining to the employment and supervision of such employees shall be the sole responsibility of Manager, which in all respects shall be the employer of such employees, and Owner shall have no liability with respect to such matters.

- (j) Insurance. Except as otherwise agreed in writing between the parties hereto, Manager shall maintain adequate workman's compensation insurance policies. Any and all other insurance maintained for the Project (such as fire, earthquake, burglary, rent or extended coverage insurance) shall be obtained by the Manager at the Project's cost; Manager shall cause the Project to be fully insured with paid-up policies in accordance with the minimum industry standards in Harris County, Texas and the standards required by the Partnership Agreement and all loan documents executed in connection with any Mortgage. Manager shall furnish Owner with certificates or duplicates of said policies and shall name Manager as an additional insured on all liability policies. Manager shall maintain an umbrella liability policy on operations of \$15,000,000 so long as such is reasonably available. Nothing in this Agreement shall be construed to limit Manager's rights and recourse under the terms of any insurance policy procured pursuant to this Agreement. Except in case of fraud, willful misconduct or gross negligence, the doing of any act or the failure to do any act by Manager, the effect of which may cause or result in loss or damage to Owner, if done pursuant to the terms hereof or pursuant to Owner's instructions, shall not subject Manager to any liability to Owner and Owner hereby waives its right of recovery against Manager if any exists.
- (k) Maintenance of Records. Manager agrees to keep and maintain at all times all necessary books and records relating to the leasing, management and operation of the Apartment Complex, including all books and records relating to the reporting requirements under the Grants, and to prepare and render to Owner monthly itemized accounts of receipts and disbursements incurred in connection with its leasing operation and management by the twentieth (20th) day of the following month. Unless Owner, in writing, expressly directs, Manager shall not be required to file any reports other than such monthly statements and the other reports required hereunder. An annual audit report shall be prepared at Owner's expense, out of Gross Operating Revenues, showing a balance sheet and an income and expense statement, all in reasonable detail and certified by an independent Certified Public Accountant. All books, correspondence, and data pertaining to the leasing, management, and operation of the Apartment Complex shall, at all times, be safely preserved. Such books, correspondence, and data shall upon the termination of this Agreement be delivered to Owner in their entirety and at any other time, upon request of Owner, be delivered to Owner within five (10) business days of such

request. Manager shall maintain files of all original documents relating to reporting requirements under the Bank loan, Grants, leases, vendors and all other business of the Apartment Complex in an orderly fashion at the Apartment Complex, which files shall be the property of Owner and shall at all times be open to Owner's inspection and available for copying at Owner's request. Manager shall familiarize itself with all the reporting requirements under the Grants and assist Owner with such reporting requirements. All books of account and business records pertinent to the management and operation of the Apartment complex shall be open to inspection by Owner, HCHA, Lender, Harris County Community Services Department and HUD, or their representatives, at all reasonable times for the purposes of audit, duplication or any other proper purpose. At the time that this Agreement is terminated, for whatever reason, Manager shall make, at Owner's sole cost and expense, a final accounting of all transactions theretofore completed. Any sums then owing to the Manager, whether for reimbursement of expenses or on account of its fee hereunder, shall be paid to the Manager. Upon termination, all books and records, and all original leases and contracts relating to the Apartment Complex, which are in the Manager's possession, shall be immediately delivered to the Owner.

- (l) Operating Expenses. Manager shall use reasonable efforts to minimize operating expenses by obtaining competitive pricing on all services and shall obtain at least three quotes on expenditures of Three Thousand Dollars (\$3,000.00) to Fifty Thousand Dollars (\$50,000.00) and obtain public bids on expenditures exceeding Fifty Thousand and One Dollars (\$50,001.00) (a "major expenditure"). Manager shall use reasonable efforts to comply with the limitations on expenditures set forth in the Budget. Manager shall obtain Owner's prior written consent before incurring on behalf of Owner any single expenditure in excess of Three Thousand Dollars (\$3,000.00) excluding utility bills, budgeted items and other normal and recurring expenses included in the Budget, except in an emergency, in which case Manager may incur such expenses as are reasonably necessary to protect life and property. Manager shall notify Owner of any such emergency expenses within as soon as practicable after they are incurred but in no event later than three (3) days thereafter. Manager shall not request payment of any invoices, whether to itself or a third party, marked-up above cost, nor shall Manager request payment of any compliance fees, marketing fees, mark-up on employees' salary or travel or fees for personnel off-site. Under no circumstances, except in the case of emergency(s), shall the Manager incur any expenditure in excess of available cash flow after repayment of debt service without prior written consent of Owner.
- (m) Legal Proceedings and Compliance with Applicable Laws.
 - (i) Manager shall notify Owner and each insurance carrier whose policy may cover a related claim, in writing of the receipt of, or attempted service on Manager of, any demand, notice or legal process, or the occurrence of any casualty loss, injury or damage on or about the Apartment Complex within one business day of such occurrence.

- (ii) Manager acknowledges that it is not authorized to accept service of process or any other notice on behalf of Owner. Manager shall not make representations or provide information to any Person that is inconsistent with the foregoing. All legal notices delivered to the property shall immediately be delivered to the Owner.
 - (iii) Manager shall immediately provide copies to Owner of all notices and other written communications from Owner's insurance carriers with respect to accepting coverage, appointing counsel or any other matter related to a claim against Owner.
 - (iv) Manager shall immediately provide notice to Owner of any oral or written communication relating to the Apartment Complex that Manager receives from a governmental or regulatory agency. Manager shall promptly provide Owner with a complete copy of any such written materials.
 - (v) Manager shall fully comply and cause its employees to fully comply, with all applicable laws in connection with this Agreement and the performance of its obligations hereunder, including all federal, state and local laws, ordinances and regulations relative to the leasing, use, operation, repair and maintenance of the Apartment Complex and the operations of Manager, including without limitation, laws prohibiting discrimination in housing, employment laws (including those related to unfair labor practices), laws regarding tenant security deposits and laws regarding the storage, release and disposal of hazardous materials, and toxic substances, including without limitation, asbestos, petroleum and petroleum products.
 - (vi) Manager agrees that it shall not, and shall not permit its employees to, cause any hazardous materials or toxic substances, to be stored, released or disposed of on or in the Apartment Complex except as may be incidental to the operation of the Apartment Complex (e.g., cleaning supplies, fertilizers, paint, pool supplies and chemicals) and then only in complete compliance with all applicable laws and regulations and in conformity with good property management. If (A) there is a violation of applicable laws regarding the storage, release and disposal of such hazardous materials, or toxic substances, or (B) Manager reasonably believes that the storage, release or disposal of any hazardous material, petroleum product, or toxic substances, could cause liability to the Owner, including any releases caused by tenants, third parties or employees, on the Apartment Complex, Manager shall notify Owner immediately.
- (n) Subject to the Regulatory Requirements and operation as seniors housing, the Manager agrees that the Apartment Complex shall be offered to all prospective tenants on a nondiscriminatory basis without regard to race, color, religion, sex, family status, handicap or national origin in accordance with applicable law.

7. Representations and Duties of Manager. The Manager represents, warrants, covenants and agrees that:

- (a) Manager has the authority to enter into and to perform this Agreement, to execute and deliver all documents relating to this Agreement, and to incur the obligations provided for in this Agreement.
- (b) When executed, this Agreement, together with all documents executed pursuant hereto, shall constitute the valid and legally binding obligations of Manager in accordance with their terms.
- (c) Manager has all necessary licenses, consents and permissions to enter into this Agreement, manage the Apartment Complex, and otherwise comply with and perform Manager's obligations and duties hereunder. Manager shall comply with any conditions or requirements set out in any such licenses, consents, and permissions, and shall at all times operate and manage the Apartment Complex in accordance with such conditions and requirements.
- (d) During the term of this Agreement, Manager will be a valid corporation or LLC, duly organized under the laws of the State of its formation, and shall have full power and authority to manage the Apartment Complex, operate in the State of Texas, and otherwise comply with and perform Manager's obligations and duties under this Agreement.
- (e) The Apartment Complex shall be managed in a manner to satisfy all restrictions, including tenant income and rent restrictions, applicable to the Grants.
- (f) Manager shall comply with any requirements under applicable environmental laws, regulations, and orders which affect the Apartment Complex.
- (g) Manager shall cause the Apartment Complex to be operated in a manner so that all requirements shall be met which are necessary to obtain or achieve (i) compliance with the Project Loan and Grants including all applicable requirements set forth in the Regulatory Agreement (ii) issuance of all necessary permanent unconditional certificates of occupancy, including all governmental approvals required to permit occupancy of all of the apartment units in the Apartment Complex, and (iii) maintenance of LEED Platinum certification.
- (h) Manager shall familiarize itself with the Grants and the Project Loan documents and comply with the requirements therein, including the requirements for the Reserve For Replacements, Operating Reserve and Lease-Up Reserve. In connection therewith, the Manager shall utilize the Reserve for Replacements and Operating Reserve only subject to the approval of the Owner and Project Lender, in their sole discretion. Subject to the Project Loan requirements, Manager may use the Lease Up Reserve to fund shortfalls in operating revenues but shall give Owner

notice of any use thereof.

- (i) Manager shall not incur indebtedness on behalf of Owner without Owner's written consent.
- (j) Manager shall provide Owner the following within 30 days after the end of each month: (i) leasing report, (ii) certified rent roll, (iii) balance sheet, statement of income and expense and cash flow, (iv) copies of all Harris County Community Services Department reports (v) inventory of the Owner's equipment and personal property located at the Apartment Complex (vi) schedule of tenant security deposits being held by the Manager on behalf of the Owner and (vii) reports of existing vacancies and occupancy. On a semi-annual basis, Manager shall provide Owner tenant data as specified by Owner. In addition, Manager shall prepare and submit to the Owner at least sixty (60) days prior to the commencement of each fiscal year of the Owner, a leasing schedule showing proposed lease rates and concessions proposed to be granted at the Apartment Complex, including the formula for granting such concessions, and the projected net annual effect of leasing activity at the Apartment Complex for the upcoming fiscal year.
- (k) Manager shall prepare and submit to the Owner within thirty (30) days after the end of each calendar month, a statement of the operations of the Apartment Complex and shall make supporting data therefore available upon request of the Owner. In addition, the Manager shall prepare and submit to the Owner within thirty (30) days after the end of each month, a monthly operating statement, a balance sheet, a statement of income, a statement of cash receipts and disbursements for the month then ended, a comparison of expenditures projected in an approved budget for the month then ended, and the actual expenditures for such month, and any other reports required by HUD, HCHA, Owner's lenders or Harris County. The Manager shall also prepare and submit to the Owner within ninety (90) days after the end of each fiscal year of the Owner, an annual operating statement, a balance sheet (as of the end of the fiscal year), a statement of cash receipts and disbursements for the fiscal year then ended, and a statement of changes in financial position and a statement of sources and application of funds during such fiscal year, such statements to be prepared in accordance with generally accepted accounting principles and audited and reported upon by an independent certified public accountant approved by the Owner. Manager shall also prepare and submit to the Owner, within a reasonable time after the Owner shall have requested, such other reports and financial statements as the Owner shall from time to time reasonably request.
- (l) Manager shall respond to inquiries from Owner, HCHA, Project Lender, the Harris County Community Services Department and HUD on a timely basis. Representatives of Owner, HCHA, Project Lender, the Harris County Community Services Department and HUD shall be entitled to visit and inspect the Apartment Complex and the books and records of Manager with respect to revenues, expenses, tenants and operations of the Apartment Complex.

- (m) Manager shall not acquire any real property or interest therein on behalf of the Owner.
- (n) Manager shall not sell or otherwise transfer or mortgage the Apartment Complex or any part thereof, except the sale of worn out or obsolete personal property or other personal property no longer useful in the operation of the Apartment Complex.
- (o) Manager and Owner shall meet periodically to discuss and review the management activities to be conducted by the Manager hereunder.

8. Representations of Owner. The Owner represents and warrants, that:

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

9. Indemnification.

Indemnification of Owner. Manager hereby indemnifies and holds harmless Owner, Owner's affiliates, and each of their respective officers, managers, directors, partners, shareholders, employees, attorneys and agents from and against any and all loss, cost, damage, liability and expense, including reasonable attorneys' fees and expenses, incurred as a result of Manager's or any of Manager's affiliates', or any of Manager's or any of Manager's affiliates', shareholder's, partner's, employee's, subcontractor's or agent's gross negligence, willful misconduct, fraud, actions outside the scope of the authority granted hereunder, or any other breach of this Agreement. So long as Manager has maintained the required insurance coverages described herein, Manager's indemnity shall be limited to Manager's insurance coverages, except in the case of fraud, gross negligence, willful misconduct or breach of this Agreement.

- (b) Indemnification of Manager by Owner. Owner shall and hereby does indemnify and hold Manager harmless against any and all claims, actions, demands, damages, losses, costs, expenses (including reasonable attorneys' fees) as a result of any claim or legal proceeding related to the performance or non-performance of any act concerning the activities of Manager hereunder as long as Manager has not acted fraudulently, or in breach of this Agreement causing material harm to Owner, or with gross negligence or with willful misconduct. Notwithstanding the foregoing, Owner's liability for indemnification arising from Manager's breach of this Agreement shall be limited to the proceeds received in connection therewith from the insurance policies carried in connection with this Project. Manager shall

be held harmless for the failure to pay any liabilities of the Project if necessary funds for such are not made available to Manager by Owner upon request therefor from Manager. Further, Manager shall have no liability to Owner with regard to Manager's activities hereunder except liability directly caused by Manager's violation of the Agreement, any Applicable Law, willful misconduct, fraud or gross negligence.

- (c) Survival. The provisions of this Section 9 shall survive the termination of this Agreement.

10. Defaults.

- (a) Manager's Event of Default. Manager shall be deemed to be in default hereunder upon the happening of any of the following ("Manager's Event of Default"):

- (i) The failure by Manager to keep, observe or perform any covenant, agreement, term or provision of this Agreement and the continuation of such failure, in full or in part, for (30) days after written notice thereof by Owner to Manager;
- (ii) The request by Manager for payment of any invoice, whether to itself or a third party, marked-up above cost as prohibited herein;
- (iii) The making of a general assignment by Manager for benefit of its creditors, the filing by Manager with any bankruptcy court of competent jurisdiction of a voluntary petition under Title 11 of U.S. Code, as amended from time to time, the filing by Manager of any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future federal or state act or law relating to bankruptcy, insolvency, or other relief for debtors, Manager being the subject of any order for relief issued under such Title II of the U.S. Code, as amended from time to time, or the dissolution or liquidation of Manager; or
- (iv) The misapplication, misappropriation or commingling of funds held by Manager for the benefit of Owner, including the payment of fees to Affiliates of the Manager or the loaning of funds to Affiliates.

- (b) Remedies of Owner. Upon a Manager's Event of Default, Owner shall be entitled to (i) terminate in writing this Agreement effective as of the date designated by Owner (which may be the date upon which notice is given), and/or (ii) pursue any remedy at law or in equity, including without limitation, an action for compensatory damages or specific performance. All of Owner's rights and remedies shall be cumulative.

- (c) Owner's Event of Default. Owner shall be deemed to be in default hereunder (an

"Owner's Event of Default") if Owner shall fail to keep, observe or perform any covenant, agreement, term or provision of this Agreement to be kept, observed or performed by Owner, and such default shall continue for a period of thirty (30) days after written notice thereof by Manager to Owner, or if such default cannot be cured within such thirty (30) day period, then such additional period as shall be reasonable, provided Owner commences to cure such default within such thirty (30) day period and proceeds diligently to prosecute such cure to completion.

- (d) Remedies of Manager. Upon an Owner's Event of Default, Manager shall be entitled to (i) terminate in writing this Agreement effective as of the date designated by Owner which is at least 10 days after receipt of such notice of termination by Owner provided the Event of Default has not then been cured, or such cure commenced, and/or (ii) pursue an action for actual damages incurred by Manager (which action must take into consideration Owner's termination rights under Section 11 of this Agreement). Manager expressly agrees that, as set forth in the Paragraph, termination and monetary damages are its sole rights and remedies with respect to an Owner's Event of Default. Manager expressly waives and releases the right to seek equitable relief, including specific performance or injunctive relief, and to sue for any consequential or punitive damages.

11. Termination Rights.

- (a) Expiration of Term. If not sooner terminated, this Agreement shall terminate on the expiration of its term set forth in Section 3 of this Agreement.
- (b) Termination By Owner Upon Manager's Event of Default. Upon a Manager's Event of Default, Owner may terminate this Agreement as specified in Section 10 (b) of this Agreement.
- (c) Termination By Manager Upon Owner's Event of Default. Upon an Owner's Event of Default, Manager may terminate this Agreement as specified in Section 10 (d) of this Agreement.
- (d) Termination By Owner Without Cause. Even in the absence of any other express right to terminate this Agreement, Owner may terminate this Agreement upon written notice at any time upon thirty (30) days' prior notice from the Owner.
- (e) Termination Upon Sale of the Apartment Complex. If the Apartment Complex is sold, conveyed or transferred during the term hereof, this Agreement shall terminate at Owner's option.
- (f) Effect of Termination Upon Payment of Fees. Upon the termination of this Agreement for any reason, Manager shall be entitled to its earned, but unpaid fees, for the period prior to the termination. Manager shall not be entitled to any fees relating to the period after the date of termination of this Agreement. Owner may offset any damages against earned but unpaid fees.

- (g) **Delivery of Apartment Complex Upon Termination.** Immediately after termination of this Agreement for any reason, Manager shall deliver to or as directed by Owner all funds, checks, keys, lease files, computer files, computers, books and records and other Confidential Information (as defined below) to Owner. Immediately after termination, Manager shall leave the Apartment Complex and cause its employees to leave the Apartment Complex without causing any damage thereto. Under no circumstances shall any default by Owner give rise to any lien on the Apartment Complex or give rise to a right of Manager to stay on the Apartment Complex after the date of termination. Termination of this Agreement under any of the provisions of this Agreement shall not release either party as against the other from liability for failure to perform any of its duties or obligations as expressed herein and required to be performed prior to such termination. Manager agrees to cooperate with Owner in the obligations set forth in this Section 2 (g).

12. **Confidentiality.**

- (a) **Preservation of Confidentiality.** In connection with the Performance of obligations hereunder, Manager acknowledges that it will have access to Confidential Information. Manager shall treat such Confidential Information as proprietary to Owner and private, and shall preserve the confidentiality thereof and not disclose, or cause or permit its employees, agents or contractors to disclose, such Confidential Information. Notwithstanding the foregoing, Manager shall have the right to disclose Confidential Information if and only to the extent it is required by court order to disclose any Confidential Information. If Manager or anyone to whom Manager transmits Confidential Information pursuant to this Agreement becomes legally compelled to disclose any of the Confidential Information, Manager shall provide Owner with prompt notice thereof so that Owner may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained by Owner or Owner waives compliance with the provisions of this Agreement, Manager shall furnish or cause to be furnished only that portion of the Confidential Information which Manager is required by contract to furnish, and will exercise commercially reasonable efforts to obtain reliable assurances that confidential treatment is accorded the Confidential Information so furnished.
- (b) **Property Right in Confidential Information.** All Confidential Information shall remain the property of Owner and Manager shall have no ownership interest therein.

13. **Survival of Agreement.** All indemnity obligations set forth herein, all obligations to pay earned and accrued fees and expenses, all confidentiality obligations, and all obligations to perform and duties accrued prior to the date of termination shall survive the termination of this Agreement.

14. **Enforcement of Agreement.** This Agreement, its interpretation, performance and enforcement, and the rights and remedies of the parties hereto, shall be governed and construed by and in

accordance with the laws of the State of Texas. In any dispute pertaining to, or litigation or arbitration arising from the enforcement or interpretation of the provisions of this Agreement, the prevailing party shall be entitled to recover its attorneys fees and costs, including those incurred in connection with all appellate levels, bankruptcy, mediation or otherwise to maintain such action, from the losing party. Venue shall rest solely in the State and Federal Courts of Harris County, Texas.

15. Assignment. Manager shall not directly or indirectly (except with the consent of Owner) sell, assign or otherwise transfer by operation of law or otherwise all or any part of the legal or beneficial interests in the Manager or all or any part of its rights or obligations under this Agreement. Subject to Section 11(e) of this Agreement, Owner may assign this Agreement to a successor owner of the Apartment Complex. A change in the members of Owner shall not constitute an assignment. If Owner assigns this Agreement to a successor owner of the Apartment Complex, such assignment shall constitute a novation, releasing Owner of all rights and obligations hereunder.

16. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by depositing same with a nationally recognized overnight delivery service such as Federal Express for next business day delivery ("Overnight Delivery") or by depositing same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or by sending by facsimile transmission, addressed as follows:

If to Owner: HCHA Cypresswood Estates, LLC
8933 Interchange Dr.
Houston, Texas 77054

Attention: Horace Allison, CEO

If to Manager: _____

Attention: _____

All notices shall be effective upon such personal delivery, upon delivery by Overnight Delivery, or five (5) business days after deposit in the United States mail or on the next business day after confirmed facsimile transmission. By giving to the other parties hereto at least 15 days written notice in accordance with the provisions hereof, a party may change its address for notice purposes.

17. Miscellaneous.

- (a) On-Site Management Facilities. Manager shall staff a management office in the Apartment Complex, and Owner shall provide space for such office at no rental charge to Manager.
- (b) Counterparts. This Agreement may be executed concurrently in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

- (c) Third Party Beneficiary. There are no third-party beneficiaries under the terms of this Agreement.
- (d) Captions. The captions of this Agreement are inserted only for the purpose of convenient reference and do not define, limit or prescribe the scope or intent of this Agreement or any part hereof.
- (e) Amendments. This Agreement cannot be amended or modified except by another agreement in writing, signed by the parties to this Agreement.
- (f) Entire Agreement. This Agreement embodies the entire understanding of the parties, and there are no further agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof
- (g) Time is of Essence. Time is the essence hereof.
- (h) Construction of Document. This Agreement has been negotiated at arms' length and has been reviewed by counsel for the parties. No provision of this Agreement shall be construed against any party based upon the identity of the drafter.
- (i) Severability. If any provision of this Agreement or the application thereof, is held to be invalid or unenforceable, such defect shall not affect other provisions or applications of this Agreement that can be given effect without the invalid or unenforceable provisions or applications, and to this end, the provisions and applications of this Agreement shall be severable.
- (j) No Continuing Waiver. No waiver by a party hereto of any breach of this Agreement shall be effective unless in writing executed by such party. No waiver shall operate or be construed to be a waiver of any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Management Agreement as of the date first set forth above.

OWNER:

HCHA CYPRESSWOOD ESTATES, LLC

By: _____
Horace Allison, Manager

MANAGER:

By: _____
_____, _____

DRAFT

Exhibit A

Rents Restrictions

Income	# of units by AMI	1br/1bath	1br/1bath	2br/2bath	2br/2bath	Total
		854	880	1040	1088	
30%	8	3	1	2	2	8
50%	16	4	4	5	3	16
60%	44	8	6	20	10	44
80%	7	1	3	1	2	7
Mrkt	13	2	4	2	5	13
		18	18	30	22	88

Note: distribution of rent restrictions subject to change

Exhibit B

Performance Standards

Tenant Account Receivables ("TAR"). Receivables to be included in the TAR performance measure means the monthly amount (excluding pending HAP payments) that a resident is obligated to pay Owner pursuant to the terms of a lease, other than non-housing charges. Owner's monthly standard for TARs is a maximum of four percent (4%). The TAR goal will be measured prior to any tenant monetary adjustment and/or quarterly write-offs.

Vacancy. A vacancy is defined as an occupied unit which becomes unoccupied during any part of the month and remains unoccupied at the end of the month. Owner's quarterly vacancy rate standard is a maximum of three percent (3%).

Vacancy Turnaround. Owner's standard for vacancy turnaround time is 25 days. This includes make ready and lease-up time. The monthly report must include the following for each vacated unit:

- (i) The date the unit was vacated
- (ii) The name of the former resident who vacated
- (iii) The unit number of the vacated unit
- (iv) The size of the vacated unit
- (v) Reason tenant vacated unit
- (vi) The date maintenance began to "make ready" the unit
- (vii) The date maintenance completed all "make ready" repairs
- (viii) The date the unit was re-leased

Work Orders

Emergency. Emergency work orders are those that address an immediate threat to life, health, safety to property or the resident or are related to fire safety. Owner's standard for completion of an emergency work order is for all orders to be completed or abated within 24 hours.

Non-Emergency. Non-emergency work orders are those that address conditions that do not pose an immediate threat to life, health, safety to property or the resident or are not related to fire safety. Owner's standard for the completion of non-emergency work orders is within 4 days.

Exhibit C

Inspection Standards

Inspections. Owner's standard for inspections is for all units to be inspected at least twice per year and for all bi-annual inspections (utilizing Housing Quality Standards (HQS) of HUD) to be conducted on or before June 30th and December 31st of each year. Accordingly, Manager must conduct a sufficient number of inspections each month beginning January 1st in order to complete round one inspection of all units before June 30th, and between July 1st and December 31st must conduct a sufficient number of inspections each month in order to complete round two inspection of all units before December 31st. Further, all units must be inspected within 6 months of the previous inspection. All HQS inspections include the site, building exteriors, common areas, units, and systems. Manager shall submit to Owner no later than January 31st and July 1st a proposed bi-annual inspection schedule designed to meet the foregoing criteria.

The monthly report should include inspection work orders that track the following information:

The time and date that the unit, building, and system (including common areas and non-dwelling space) was inspected

Who conducted the inspection

Whether the unit, building and/or system inspected passed or failed

Reinspections for all failed inspections

Whether a work order was generated with the work order number and date

If a work order was generated, the date the work order was completed

Housekeeping Inspections. Housekeeping inspections will be conducted initially within sixty (60) days after the move-in of each resident. Thereafter, Housekeeping inspections will be scheduled on an annual basis at lease renewal or recertification.