

MANAGEMENT AND OPERATING AGREEMENT

THIS AGREEMENT made this 22nd day of October, 1997, by and between **WOODLAND APARTMENTS PRESERVATION, INC.** ("Owner") and **COOS-CURRY HOUSING AUTHORITY** ("MANAGEMENT AGENT").

WITNESSETH:

WHEREAS, Owner is the owner of certain improved real property and the improvements thereon known as **Woodland Apartments Preservation, Inc.** consisting of **seventy two (72)** apartments located at **245 S. Schoneman, Coos Bay, Oregon**, which real property and improvements are referred to herein as the "Property",

WHEREAS, Agent has represented that it possesses superior skills and experience in the provision of residential property management services, and

WHEREAS, Owner desires to obtain the services of Agent for the purpose of managing and operating the Property, and Agent desires to provide such services.

NOW, THEREFORE, IN CONSIDERATION OF the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Agent agree as follows:

ARTICLE I **APPOINTMENT OF AGENT**

Owner hereby appoints Agent and Agent hereby accepts appointment on the terms and conditions set forth below as Owner's exclusive agent to manage, operate, supervise, and lease the Property.

ARTICLE II **TERM**

2.1 **TERM.** The initial term of this Agreement will begin on the date of execution of this agreement and the agreement shall remain in effect until cancelled by HUD, the Owner or the Agent as provided in the terms of this agreement or by operation of law.

2.2 **EARLY TERMINATION.** Notwithstanding the provisions of Section 2.1 above to the contrary, this Agreement and the obligations of the parties hereunder shall cease, upon the occurrence of any of the following:

(A) In the event of a sale, condemnation of the Property, or destruction of twenty-five percent (25%) or more of the Property, either party may terminate this Agreement upon thirty (30) days written notice to the other party.

(B) If a petition in bankruptcy is filed by or against either party, or if either party shall make an assignment for the benefit of creditors or take advantage of any insolvency act, the other party may terminate this Agreement upon ten (10) days written notice to the other party.

(C) If Owner fails to comply, after notice and an opportunity to cure, with any rule, order, determination, ordinance or law of any federal, state, county, or municipal authority, Agent may terminate this Agreement upon ten (10) days written notice to Owner unless Owner is in good faith contesting same, pursuant to Section 4.2(J) herein.

(D) If either party defaults in the performance of any of its obligations hereunder and such default continues for thirty (30) days after written notice to the defaulting party specifying such default, the party not in default may terminate this Agreement upon ten (10) days written notice to the defaulting party. Notwithstanding the above, if a cure has commenced and the defaulting party is diligently pursuing said cure within said 30 day period then the party not in default shall not effect the termination.

(E) Unilateral termination may be made thirty (30) days after written notice by either party to the other terminating this Agreement. Notice of termination shall be provided by one party to the other in accordance with Section 9.5. Notice of termination may be given at any time without cause or penalty. The respective rights and obligations of the parties shall continue to be governed by this Agreement until the effective date of such termination.

2.3 DUTIES UPON TERMINATION. Upon termination of this Agreement for any reason:

(A) Agent shall have no further right to act on behalf of Owner or to disburse any of Owner's funds;

(B) Agent will immediately deliver to Owner, at no cost to Owner, all Books, Records, and Documents (as herein defined) maintained by it pursuant to this Agreement and do all that is reasonably necessary to facilitate the orderly transition of management of the Property;

(C) Agent shall render to Owner an accounting of all funds of Owner held by Agent relating to the Property and shall immediately cause such funds to be paid to Owner; and

(D) Agent shall perform all reporting and accounting functions hereunder for the period from the date of the last report or accounting to the date of termination.

ARTICLE III
COMPENSATION

The compensation of Agent for its services hereunder shall be fixed and paid as provided by HUD. In the event of commencement or termination of this Agreement other than on the first or last

day of a month, respectively, the compensation of Agent shall be prorated to the effective date of such commencement or termination or as otherwise provided by HUD regulation.

ARTICLE IV DUTIES AND RESPONSIBILITIES

4.1 GENERAL RESPONSIBILITIES OF AGENT. Subject to the provisions of this Agreement, Agent is hereby authorized to manage, operate and lease the Property in accordance with the standards of practice of professional managers (possessing the same superior skills and experience of Agent) of similar properties in the location of the Property and to provide other customary management services at the Property for the ordinary and usual business and affairs of the Property as are consistent with the management, operation, leasing, and maintenance of a building or buildings of the type located on the Property.

4.2 SPECIFIC DUTIES AND RESPONSIBILITIES OF Agent. Agent agrees and is hereby granted authority to do the following:

(A) HUD REQUIREMENTS. The Property is subject to a mortgage which is held by Federal National Mortgage Association under Section 236 of the National Housing Act. The Owner has entered into a "Regulatory Agreement" with the Secretary of that U.S. Department whereby the Owner is obligated to provide for management of the Property in a manner satisfactory to the Secretary. In addition, the Owner has entered into a "Rent Supplement Contract" with the Secretary. The Owner has furnished the Agent with copies of the Regulatory Agreement and the Rent Supplement Contract. In performing its duties under this Management Agreement, the Agent will comply with all pertinent requirements of the Regulatory Agreement, the Rent Supplement Contract, and the directives of the Secretary as provided in regulations, handbooks, or other notices.

(B) Books, Records and Documentation. Agent shall maintain at its offices located at **1700 Monroe St.** complete and separate books, records and documents relating to the management and operation of the Property, including without limitation: all contracts, original leases, amendments, extensions and agreements relating to contracts and leases; files, correspondence with tenants and prospective tenants; computations of rental adjustments; tenant income and other records required to verify compliance with the Regulatory Agreement, Rent Supplement Contract, and directives of the Secretary; maintenance and preventive maintenance programs, schedules and logs; tenant finish and construction records; inventories of personal property and equipment; correspondence with vendors; job descriptions; correspondence with federal, state, county, and municipal authorities; brochures and accounts held or maintained by Agent, and; all other books, records and documentation required to be prepared or kept by Agent under the terms of this Agreement (all such books, records, and documents being referred to herein as "Books, Records, and Documents"). Books and records of account shall be prepared in conformity with generally accepted accounting principles consistently applied. Owner shall have the right to examine, audit and take originals and copies of said Books, Records and Documents at reasonable times and at no cost to Owner. Monthly accounting reports shall be in a format approved by Owner. Agent shall also, at the request of Owner, furnish such further accounting and fiscal information in a manner sufficient to respond to Owner's financial information requirements. All Books, Records and Documents shall be the property of Owner even though prepared by or in the possession of Agent.

(C) Annual Audit. When requested by Owner, at the end of each fiscal year of the Property and as of the date of termination of this agreement, Agent shall arrange and coordinate an annual audit of the books and records of the Property made by a firm of certified public accountants approved by Owner. At the request of Owner, Agent shall also have said accountants prepare for execution by Owner all forms, reports, and returns required by any federal, state, county, or municipal authority relating to the Property. The cost of said audit is deemed to be a cost of the Owner and shall be paid by the agent from project operating funds.

(D) Repairs and Maintenance. Agent will use due professional care to maintain the condition of the Property in a first class condition, will regularly inspect the readily accessible areas of Property, will take ordinarily prudent precautions against fire, vandalism, burglary and trespass on the Property, and will arrange to make all necessary repairs. However, Agent, shall make no expenditures in excess of \$2,500 for repairs, without the prior written consent of Owner, unless the expenditure for such repairs has been approved in the Annual Budget (defined below), except as to any emergency repairs to the Property immediately necessary for the preservation or safety of the Property or for the safety of persons or which are required to avoid suspension of necessary services to the Property. Agent shall maintain written records of inspections of the Property, maintenance and repair requests, maintenance and repair work, fire alarm and suppression equipment maintenance, and other similar activities. Such records shall be made available to Owner and for Owner's defense in any tort claims or litigation.

(E) Capital Assets.

(i) Agent shall make no expenditures in excess of \$2,500 for alterations, capital improvements, renovations or replacements of furniture, fixtures or equipment, unless such expenditure is contained in the Annual Budget, without the prior written approval of Owner. Notwithstanding the above, the approved Annual Budget with proper documentation, shall be deemed authorization for Agent to make budgeted expenditures without prior approval by Owner provided that a) the amount of the expenditure is within five percent (5%) or \$2,000 of the originally approved amount, whichever is less; and b) Agent submits evidence of expenditure satisfactory to Owner.

(ii) Agent shall make no disposition of capital assets with an original value in excess of \$1,500 without the prior written approval of Owner. In any event, Agent shall provide a record to Owner of all dispositions of fixed assets after such dispositions have been made.

(iii) Before undertaking any alterations, capital improvements, renovations or repair work costing in excess of \$5,000 ("Major Work"), Agent shall attempt to obtain three or more bids. All contracts for Major Work shall be in writing and shall require a ten percent (10%) retainage to be released only upon satisfactory completion of the Major Work and receipt of all necessary approvals and documentation.

(F) Service Contracts and Equipment Leases. Agent is authorized to make and enter into for the account of Owner all contracts and equipment leases as are required in the ordinary course of business for the operation, maintenance, and service of the Property and to pay the same when due; provided however, Agent shall be required to obtain the prior written consent of Owner before entering into any contract or equipment lease for the account of Owner in which (i) the total amount payable exceeds \$5,000 or (ii) the term exceeds one (1) year, unless such contract or lease

is made under circumstances which shall reasonably be considered constitute an emergency. Notwithstanding the foregoing, Agent shall use its best efforts to contact and secure prior approval of Owner in the event any such emergency expenditure should be likely to exceed \$5,000.

(G) Supplies and Inventory.

(i) Agent shall, on behalf of Owner, purchase such supplies and expendable items as are necessary to operate the Property. When taking bids or issuing purchase orders, Agent shall use its commercially reasonable and prudent efforts to secure for Owner's benefit any discounts, commissions, or rebates obtainable in connection with such purchases.

(ii) Agent shall conduct a physical inventory of the personal property, materials, and equipment used in connection with the Property at the commencement and termination of the Agreement and at the end of each fiscal year. Such inventories shall be maintained with other Books, Records and Documents.

(H) Insurance

(i) Owner, at Owner's expense, shall carry public liability insurance including bodily injury, property damage and personal injury with a combined single limit policy in the amount of not less than \$1,000,000. Owner shall maintain fire insurance with an extended coverage endorsement equal to the full insurable replacement cost of the Property, which shall provide for a waiver of subrogation rights against Agent, except for Agent's acts or omissions to the extent provided by the insurance carrier without any additional premium or cost to the Owner. Owner agrees that at all times during the term of this Agreement all bodily injury, property damage and personal injury insurance carried by Owner on the Property shall without cost to Agent, cover Agent as well as Owner, by endorsement of such insurance coverage to specifically name Agent as an additional insured.

(ii) Agent shall, at Agent's expense, carry commercial general liability insurance with limits of coverage for bodily injury and property damage liability of not less than \$1,000,000 per occurrence and not less than \$2,000,000 policy general aggregate. Agent's participation in a governmental risk sharing pool shall be deemed to satisfy Owner's insurance requirements under the preceding sentence.

(iii) Owner and agent shall provide evidence to the other that the insurance specified in (i) and (ii) above is being maintained in effect along with evidence that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) day's advance written notice is given to the nonprocuring party. Each party shall name the other as an additional insured on their respective policies to the extent of each party's indemnification obligations under this Agreement.

(H) Insurance (iii) revised 04/14/05 See Exhibit A (attached)

(iv) Agent shall not knowingly permit the use of the Property for any purpose which might void any policy of insurance relating to the Property, increase the premium otherwise payable or render any loss thereunder uncollectible.

(v) Agent shall cause to be placed and kept in force Workers' Compensation insurance as required by the State of Oregon for all Employees involved with management or maintenance of Property.

(vi) Agent shall furnish a fidelity bond or employee dishonesty coverage for all principals of the Agent and for all persons employed by Agent who participate directly or indirectly in the management and maintenance of the Property and its assets, accounts and records. Coverage will be at least equal to the Property's gross potential income for two (2) months.

(I) Debt Service, Taxes and Assessments. Agent shall pay debt service, taxes, impositions, or assessments relating to the ownership or operation of the Property (including without limitation improvement assessments, real estate taxes, personal property taxes, taxes on income or rents, and any charges similar to or in lieu of any of the foregoing) only as provided in federal regulations or directives from HUD.

(J) Compliance with Legal Requirements. Agent shall use reasonable means to become aware of, and shall take such actions as Agent deems prudent and necessary to comply with, any laws, orders, or requirements affecting the use or operation of the Property by any federal, state, county, or municipal agency or authority, provided that if the cost of compliance in any instance exceeds \$2,500, Agent shall not expend funds for compliance without Owner's prior written consent. Agent shall promptly notify Owner in writing of all such orders, notices or requirements requiring expenditure of non-budgeted amounts. Agent, however, shall not take any action as long as Owner is contesting, or has affirmed its intention to contest and promptly institutes proceedings contesting any law, order or requirement. Agent shall prepare, execute, and, after obtaining the written approval of Owner, file any customary and standard reports and documents required by an applicable governmental authority. The filing of any special report or document shall not be included as part of this Agreement. Agent covenants and agrees to obtain and maintain, at Agent's sole expense, all licenses and permits necessary for the conduct of its business as Management Agent of the Property.

(K) Energy Conservation. Agent shall use prudent and customary means to use and control utilities at the Property in a manner to minimize total costs and satisfy Owner's obligations to tenants.

(L) Advertising. Agent shall advertise the Property for rent at such times and by use of such media as it deems necessary subject to the Annual Budget approved or as may be required by HUD regulations or directives.

(M) Employment of Personnel.

(i) Agent will hire, train, supervise, direct the work of, pay, and discharge all personnel necessary for operation of the Property. Such personnel shall in every instance be employees of Agent and not of Owner. Owner shall have no right to supervise or direct such employees. Agent will not discriminate against any employee or applicant for employment in violation of any applicable law. The terms "employees" or "personnel" shall be deemed to mean and include employment of a casual, temporary, or part-time nature as well as long term employment.

(ii) The salaries, wages, other compensation and fringe benefits (including without limitation Social Security, taxes, worker's compensation insurance, and the like), and travel, entertainment and other expenses shall be reimbursable expenses of Agent with respect to employees working on or in respect to the Property:

(iii) The salaries, wages and other compensation of the employees of the Agent working on or in respect to the Property shall be expenses of Agent reimbursable by Owner from operating income of the Property. This reimbursement is as provided in HUD Handbook 4381.5 REV-2, "The Management Agent Handbook", Chapter 6, pp 6.38. Examples of Agent employee activities which are reimbursable from property operating account are as follows:

- (a) taking applications
- (b) screening, certifying and recertifying residents
- (c) maintaining the project
- (d) accounting for project income and expenses

The salaries, wages, and compensation of the above described Agent Employees shall be deemed to be expenses of Agent reimbursable by Owner only to the extent their time is devoted to the Property as evidenced by payrolls and time logs certified by Agent. In addition, the Property Employees' so-called fringe benefits, medical and health insurance, group life insurance and employee related costs including but not limited to Social Security, payroll taxes, workers' compensation and the like, shall also be reimbursable expenses of Agent to the same extent as wages.

(N) Leasing.

(i) The Agent shall make diligent efforts to secure and/or retain tenants for the Property recognizing that the goal of leasing is to achieve the highest possible occupancy at rental rates consistent with budgetary projections and that are affordable to current and prospective tenants. Agent shall in good faith conduct such investigations of the financial responsibility and general reputation of prospective tenants, as are ordinarily and customarily performed by the managers of similar properties in the location of the Property. Agent shall also obtain from current and prospective tenants such household income or other information which Owner requires from time to time. Owner shall have the authority to establish (and from time to time change) monthly rent amounts, dwelling lease terms and provisions and leasing policies governing the admission, occupancy

and eviction of tenants. Owner further reserves the right to establish incentives and/or rent concessions as needed in order to carry out Owner's policy goals.

The above described discretionary authority of Owner to establish and/or change policies and procedures will at all times be subject to compliance with all pertinent requirements of the Regulatory Agreement, the Rent Supplement Contract, and the directives of the Secretary of HUD as provided in regulations, handbooks, or other notices.

(ii) Agent and Owner recognize that the dwelling units are subsidized by HUD and do jointly agree to:

(a) Comply with this Project's Regulatory Agreement, Mortgage & Mortgage Note, and any Subsidy Contract or Workout/Modification Agreement.

(b) Comply with HUD handbooks, notices or other policy directives that relate to the management of the Project.

(iii) Agent will select and admit tenants, compute tenant rents and assistance payments, certify and recertify tenants and carry out other contract administration responsibilities in accordance with HUD Handbook 4350.3 and other HUD instructions.

(iv) At the same time as Agent submits the proposed budgets as provided for hereunder, it shall include recommendations for changes to the Rent Schedule.

ARTICLE V **EXPENSES OF OWNER**

Except as otherwise provided in this Agreement, all obligations incurred to third parties in the course of managing the Property pursuant to this Agreement shall be obligations of Owner and shall be for its account. All reasonable expenses, including fees for necessary legal advice, incurred by Agent in performance of its obligations under this Agreement shall be reimbursed by Owner to the extent they are described as reimbursable in this Agreement (subject to the Owner approved Annual Budget or other Owner approval requirements of this Agreement). Such expenses and reimbursables shall be paid with funds drawn from the General Account in accordance with Article VII hereof.

ARTICLE VI **EXPENSES OF AGENT**

Agent agrees to pay all salaries, wages and other compensation and fringe benefits of all personnel described in Section 4.2(m) of this Agreement as an expense of Agent without reimbursement by Owner, except as provided in Subsection 4.2(m)(iii). Agent shall pay other expenses which are expressly (a) payable by Agent or (b) not reimbursable hereunder. Agent shall also pay (without reimbursement) any costs of providing office facilities and supplies for such personnel and other expenses incurred by Agent which are not incurred in performance of duties and obligations required by this Agreement.

ARTICLE VII
BANK ACCOUNTS

7.1 ESTABLISHMENT OF ACCOUNTS.

(A) Agent shall establish a "Regular Operating Account," in its name in trust for the Owner which shall be used for depositing rental receipts and other receivables not specifically designated for other Project accounts. The account shall be used to pay operating expenses of general administration including mortgage payments, management fees, utilities and maintenance and other debts incurred for operation of the Property. The account shall be established and used as prescribed in the Project Regulatory Agreement, HUD Handbooks and Notices.

(B) Agent shall establish a "Replacement Reserve Account," in its name in trust for Owner. The account shall be for the deposit of cash for the replacement of Project capital items. The amount and frequency of deposits to the account is regulated by the Regulatory Agreement and Agent shall comply in all respects to the requirements of the Regulatory Agreement, HUD Handbooks and Notices in its administration of the account.

(C) Agent shall establish a "Security Deposit Account," in its name. The Security Deposit Account is to be established solely for the Property and shall contain no funds other than deposits collected in connection with operation of the Property. Agent shall not commingle any of its own funds with the funds in the Security Deposit Account. All funds deposited in the Security Deposit Account shall be held in trust by Agent for Owner (or the tenants of the Property as applicable). The account shall be for the retention of security deposits delivered in connection with leases of any portion of the Property.

(D) All above described Accounts shall be established in Agent's name in a federally insured national or state bank in Coos County, Oregon, approved or selected by Agent. The total amount of deposit shall at no time exceed the federally insured limit, unless collateral is pledged by the financial institution.

(E) Owner is aware that a centralized disbursement account for Owner's properties may be used for the payment of normal and reasonable expenses as described in Section 7.1(A) above. The use of said account shall not be construed as a violation of the terms of this Section 7.1. Agent may also maintain a petty cash fund from money in the Regular Operating Account and make payments therefrom in a manner consistent with the usual course of dealing with such funds in the property management business. Such petty cash fund shall be subject to the same rules and restrictions set forth above as are applicable to the bank accounts.

(F) All Accounts established by Agent shall be interest bearing unless the cost of establishing an interest bearing account exceeds the anticipated interest accrual. All interest shall be the property of Owner.

7.2 FUNDS PROVIDED BY OWNER. If the funds collected by Agent from operation of the Property are not sufficient to pay the expenses incurred and authorized to be paid in operation of the Property and to make all reimbursements to Agent pursuant hereto, Agent shall submit to Owner a statement showing such shortfall and identifying the bills and charges requiring payment, and Owner shall immediately advance funds sufficient to pay same to the Agent.

7.3 PROHIBITED USES OF FUNDS. Agent may not use any funds of Owner for any purpose other than the management of the Property as provided in this Agreement. Among other things, Agent may not use any funds of Owner for rebates, kickbacks, or bribes, nor shall any such funds be contributed to any political party, committee, or campaign of any candidate for public office.

ARTICLE VIII ANNUAL BUDGETS

8.1 SUBMISSION OF BUDGETS. At the commencement of this Agreement, and thereafter at least 45 days prior to the beginning of each fiscal year, Agent shall prepare and submit to Owner for Owner's review and approval or revision proposed budgets of (a) the estimated income and expenses of the Property and (b) the estimated capital expenditures for the Property for the next fiscal year or other operating period as may be agreed by the parties (collectively referred to as "Annual Budget"). The proposed Annual Budget will show the estimated income and expenses on a month by month basis for the fiscal year and will be made in accordance with Generally Accepted Accounting Practices (GAAP). Agent will include a detailed explanation for the numbers used in such budgets.

8.2 SUBMISSION OF OTHER REPORTS. With each submittal of a proposed Annual Budget to Owner, Agent shall also include: rental rate recommendations; a listing of all capital improvement and all repair, maintenance, renovation and replacement expenditures (together with estimated costs for each item) anticipated to be made in the upcoming operating period, and; a payroll analysis including a salary or wage description for every Property Employee of Agent whose compensation is reimbursable hereunder.

8.3 APPROVAL OF BUDGETS. Owner agrees that if objection to the proposed Annual Budget is not given within thirty (30) days after Owner's receipt of the proposed Annual Budget, Agent may assume approval and operate within the proposed Annual Budget until notified otherwise by Owner in writing. To the extent reasonable, Agent shall eliminate or revise any item or amount in the Annual Budgets which is disapproved by Owner to the extent necessary to obtain Owner's approval.

8.4 COMPLIANCE WITH BUDGETS. The Annual Budget, after approval by Owner, shall be used by Agent as a guide for the actual operation of the Property. Except as expressly provided otherwise in this Agreement, Agent agrees not to make any expenditure for the maintenance and operation of the Property which would result in either (A) a particular category of the Annual Budget being exceeded by more than **five percent (5%)**, (B) the amount of total expenditures under the Annual Budget being exceeded by more than **five percent (5%)**, without in each case obtaining the prior written approval of Owner.

ARTICLE IX GENERAL PROVISIONS

9.1 RELATIONSHIP.

(A) Notwithstanding the foregoing, it is understood and agreed that all contracts and obligations entered into by Agent with respect to the Property as provided for in, and consistent with, this Agreement ("Property Contracts") shall be the obligations of Owner and Owner agrees to indemnify, defend and hold Agent harmless from any liability or claims arising from the Property Contracts except for any breach of the Property Contracts caused by Agent..

(B) Agent and Owner shall not be construed as joint venturers or partners, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Agent understands and agrees that its relationship to Owner is that of independent contractor working on behalf of Owner and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor.

9.2 ASSIGNMENT. This Agreement is not assignable by Agent. With prior written notice to Agent, this Agreement may be assigned by Owner.

9.3 BENEFITS AND OBLIGATIONS. Subject to the provisions of Section 9.2 above, the covenants and agreements herein contained shall inure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, successors, and assigns.

9.4 CLAIMS BY ONE PARTY AGAINST THE OTHER AND INDEMNIFICATION.

(A) Agent shall at its sole cost and expense defend, indemnify and hold Owner harmless from and against any and all claims, demands, suits, actions or judgments (and against all attorneys' fees, court costs and expenses related thereto or in enforcing this indemnity) which actually or allegedly arise from or are in any manner connected with the performance of or failure to perform the duties of Agent as set forth in this Agreement, or which actually or allegedly arise from the negligence or intentional acts of Agent or its officers, agents, employees or subcontractors, except such as may have been caused solely by the negligence of Owner.

(B) Owner shall at its sole cost and expense defend, indemnify and hold Agent and its affiliates, officers, directors, shareholders, agents and employees, harmless from and against any and all claims, demands, suits, actions or judgments (and against all attorneys' fees, court costs and expenses related thereto or in enforcing this indemnity) which actually or allegedly arise solely from the negligence or willful misconduct of Owner or its officers, agents or employees.

(C) Survival. The provisions of this Section 9.4 shall survive the expiration and any termination of this Agreement.

9.5 NOTICES. All notices provided for in this Agreement shall be in writing and served by hand delivery or by registered or certified mail, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

TO OWNER: PRESIDENT OF THE BOARD OF DIRECTORS
WOODLAND APARTMENTS PRESERVATION, INC. (WAPI)
1700 MONROE, NORTH BEND OR 97459
ATTN: MARGARET THOMAS

TO AGENT: WAPI PROJECT MANAGER

9.6 ENTIRE AGREEMENT. This Agreement represents the entire agreement between the parties with respect to the subject matter hereof. No amendments to this Agreement shall be binding unless in writing and signed by both parties. Titles of articles, sections and paragraphs are for convenience only and neither limit nor amplify the provisions of this Agreement.

9.7 SEVERABILITY. If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to any person or circumstance, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

9.8 APPLICABLE LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon. Venue shall take place in the County of Coos, State of Oregon

9.9 AGENT. The term "Agent" as used in this Agreement shall include any corporate subsidiaries or affiliates of Agent who perform services in, on or about the Property in connection with this Agreement.

9.10 ATTORNEY'S FEES. If any party hereto brings suit to enforce or declare the meaning of any provision of this Agreement, the prevailing party, in addition to any other relief, shall be entitled to recover reasonable attorneys' fees and costs, including any on appeal and including attorneys' fees and costs incurred in pursuing collection or enforcement of the prevailing party's awards.

ARTICLE X ENVIRONMENTAL CONDITIONS

10.1 OWNER'S REPRESENTATIONS AND WARRANTIES. Owner represents and warrants to Agent that Owner has made or will make prior to commencement of the term of this Agreement full and complete disclosure to Agent of all toxic or hazardous substances in, on or around the Property (collectively referred to as "Hazardous Substances") known or suspected by Owner to exist and Owner will provide Agent with copies of all studies, reports, testing results, surveys, operations and management plans performed by or for Owner or its predecessor or other such information in Owner's possession or control concerning or referring to Hazardous Substances and/or environmental conditions in, on or around the Property. Hazardous Substances include, without limitation, any substance regulated by federal, state or local governmental agencies as dangerous to the health or safety of building occupants, PCB's, asbestos, substances known or suspected to be cancer causing, underground storage tanks of any kind, and any other contaminant or material reasonably considered to be potentially harmful to human health or safety. Owner

represents and warrants that it has no knowledge or information concerning any Hazardous Substances except as clearly disclosed to Agent in writing as provided in this paragraph.

10.2 INDEMNIFICATION. Owner shall defend, indemnify and hold Agent and Agent's affiliates, officers, directors, shareholders, agents and employees (collectively referred to as "Agent Parties") harmless from any and all claims, losses, liabilities, suits, actions or proceedings of any kind arising out of or relating to the presence of any Hazardous Substances on the Property, excepting only such claims, losses, liabilities, suits, actions or proceedings which result (i) solely from the negligence or willful misconduct of any of the Agent Parties, or (ii) from Hazardous Substances introduced to or brought upon the Property by any of the Agent Parties or any other person or entity under the control of any of the Agent Parties. Agent shall defend, indemnify and hold Owner and Owner's affiliates, officers, directors, shareholders, agents and employees harmless from any and all claims, losses, liabilities, suits, actions or proceedings of any kind arising out of or relating to the presence of any Hazardous Substances on the Property, and which result (i) solely from the negligence or willful misconduct of any of the Agent Parties, or (ii) from Hazardous Substances introduced to or brought upon the Property by any of the Agent Parties or any other person or entity under the control of any of the Agent Parties.

10.3 OWNER'S RESPONSIBILITY. Except as expressly provided in this Agreement, Agent is not required to take any action or to enter into any contract or agreement with third parties for the removal, disposal, or abatement of Hazardous Substances, whether now known and disclosed by Owner or subsequently discovered. Any such contract or agreement shall be made directly by Owner for Owner's own account.

10.4 AGENT'S RESPONSIBILITY. Agent shall use reasonable care to comply on Owner's behalf with the provisions of any operations and maintenance plan prepared by or for Owner with respect to any Hazardous Substances from and after such time as a copy of such plan is provided to Agent. If Agent believes that compliance with any such plan provided after the date of this Agreement would make Agent's performance of this Agreement more burdensome or expensive, Agent shall submit a written request to Owner to increase Agent's compensation to cover such additional burden or expense. Agent shall also promptly inform Owner in writing if it discovers any Hazardous Substances which have not been disclosed by Owner to Agent. Agent shall notify its employees of any Hazardous Substances known by Agent to be located in any areas where its employees might reasonably be expected to come in contact with them and shall take such steps as are required of an employer under applicable law with respect to such conditions and circumstances. Agent shall also at Owner's expense provide and post such public notices as may be required by the laws of the State of Oregon with respect to any Hazardous Substances or environmental conditions of the Property disclosed by Owner or discovered by Agent to exist in, on or around the Property.

The undersigned, by acknowledgement and execution, warrant they have legal authority to enter into this agreement and do hereby enter into this agreement on behalf of:

OWNER:

WOODLAND APARTMENTS PRESERVATION, INC. (WAPI)

By

Margaret Thomas

Name

President

Title

10-22-97

Date

AGENT:

COOS-CURRY HOUSING AUTHORITY (CCHA)

[Signature]

By

David J. Roberts

Name

Executive Director

Title

10/30/97

Date

**EXHIBIT A
To Management and Operating Agreement**

Refer to: Pages 5 & 6

(H) Insurance (iii) is amended to clarify primary coverage of Agent Employee Claims.

(iii) Owner and Agent shall provide evidence to the other that the insurance specified in (i) and (ii) above is being maintained in effect along with evidence that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days' advance written notice is given to the nonprocuring party. Each party shall name the other as an additional insured on their respective policies to the extent of each party's indemnification obligations under this Agreement. ~~It is further agreed that Agent's liability insurance shall be primary with respect to Agent Employee Claims (as defined below), and not contributing with any other insurance maintained by Owner notwithstanding any inconsistent provisions in any such policies maintained by Owner and shall not require contribution by any insurance or self insurance maintained by Owner on any basis, pro rata or otherwise.~~

~~For purposes of the preceding paragraph, Agent Employee Claims shall be defined as any and all claims, demands, suits, actions or judgments which actually or allegedly arise from the acts or omissions of Agent or its officers, agents, employees or contractors, except such as may have been caused solely by the negligence of Owner. To the extent a claim is brought against Owner as the result of an Agent Employee claim, such claim against Owner shall be deemed to be an Agent Employee Claim. For example, if Agent's bookkeeper fails to deposit a tenant security deposit in a residential landlord/tenant trust account as required by law, and the tenant therefore brings a claim against owner for violation of such law, then such claim shall be an Agent Employee Claim covered by Agent's liability insurance.~~

The undersigned, by acknowledgement and execution, warrant they have legal authority to make the above amendment (Exhibit A) to this management agreement:

OWNER: WOODLAND APARTMENTS PRESERVATION, INC. (WAPI) 04/14/05

By Margaret Thomas Date President
Name Title

And

AGENT: COOS-CURRY HOUSING AUTHORITY (CCHA) 04/14/05

By [Signature] Date Executive Director
Name Title

EXHIBIT A
To Management and Operating Agreement

Refer to: Pages 5 & 6

(H) Insurance (iii) is amended to clarify primary coverage of Agent Employee Claims.

(iii) Owner and Agent shall provide evidence to the other that the insurance specified in (i) and (ii) above is being maintained in effect along with evidence that the insurance will not be cancelled or materially changed in the scope or amount of coverage unless thirty (30) days' advance written notice is given to the nonprocuring party. Each party shall name the other as an additional insured on their respective policies to the extent of each party's indemnification obligations under this Agreement. ~~It is further agreed that Agent's liability insurance shall be primary with respect to Agent Employee Claims (as defined below), and not contributing with any other insurance maintained by Owner notwithstanding any inconsistent provisions in any such policies maintained by Owner and shall not require contribution by any insurance or self insurance maintained by Owner on any basis, pro-rata or otherwise.~~

~~For purposes of the preceding paragraph, Agent Employee Claims shall be defined as any and all claims, demands, suits, actions or judgments which actually or allegedly arise from the acts or omissions of Agent or its officers, agents, employees or contractors, except such as may have been caused solely by the negligence of Owner. To the extent a claim is brought against Owner as the result of an Agent Employee claim, such claim against Owner shall be deemed to be an Agent Employee Claim. For example, if Agent's bookkeeper fails to deposit a tenant security deposit in a residential landlord/tenant trust account as required by law, and the tenant therefore brings a claim against owner for violation of such law, then such claim shall be an Agent Employee Claim covered by Agent's liability insurance.~~

The undersigned, by acknowledgement and execution, warrant they have legal authority to make the above amendment (Exhibit A) to this management agreement:

OWNER: WOODLAND APARTMENTS PRESERVATION, INC. (WAPI)

Margaret Thomas _____ 04/14/05

By Margaret Thomas _____ Date President

Name _____ Title

And

AGENT: COOS-CURRY HOUSING AUTHORITY (CCHA)

Paul Colbert _____ 04/14/05

By Paul Colbert _____ Date Executive Director

Name _____ Title

*on disc in
disc file in
Thyllis' office*

wapi Exhibit A