

MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT (this “**Agreement**”), made as of _____ between _____, a New York condominium, having an office at _____ (hereinafter referred to as the “**Board**”), and XL Real Property Management, having an office at 600 Madison Avenue, 17th Floor, New York, NY 10022 (hereinafter referred to as the “**Agent**”).

WITNESSETH

WHEREAS, a certain Declaration dated as of _____ (as the same may be amended from time to time in accordance with the provisions thereof, the “**Declaration**”) establishing a plan for condominium ownership of the premises located at (the “**Property**”) has been duly recorded, establishing (the “**Condominium**”); and

WHEREAS, the Board is acting on the behalf of the owners (collectively, the “**Unit Owners**”) of all of the Units (as defined in the Declaration) of the Condominium and has been designated, appointed and/or elected, in accordance with the Declaration and the by-laws of the Condominium (the “**By-Laws**”; the By-Laws and the Declaration, collectively, the “**Condominium Documents**”) to administer and operate the Condominium as set forth therein; and

WHEREAS, subject to and in accordance with the Condominium Documents, the Board is authorized to retain a managing agent for the Condominium; and

WHEREAS, the Board desires to engage and appoint Agent as managing agent of the Condominium and Agent desires to accept such engagement and appointment, subject to and in accordance with the provisions, terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Agreement that are not otherwise defined herein, unless the context in which used shall otherwise require, shall have the respective meanings set forth in the Condominium Documents. Each of the aforesaid capitalized terms shall be applicable to singular and to plural nouns and to verbs of any tense.

2. **Units.** The Condominium is comprised of ____ Units.

3. **Appointment of Agent.** The Board hereby appoints Agent as the sole and exclusive managing agent of the Condominium and Agent hereby accepts such appointment to perform such duties and services and on such terms and conditions as hereinafter provided.

4. **Delivery of Documents.** In order to facilitate efficient operation, the Board shall furnish the Agent with complete and correct copies of (i) the Condominium Documents, (ii) all written policies of the Condominium and a set of current Rules and Regulations and/or other community or house rules (if any) of the Condominium (collectively, the “**Condominium Policies**”), and (iii) a complete and up to

date set of the plans and specifications for the Property to the extent available. Copies of all guarantees and warranties in force with respect to the Property or any component thereof at the time of the execution of this Agreement shall be furnished to the Agent.

5. **Duties of Agent.** The duties of Agent shall be to assist the Board in performing the following services:

On behalf of the Board, cause to be hired and paid, and provide routine supervision of, all persons deemed by Agent necessary and desirable to be employed in order to properly maintain and operate the Property (collectively, the “**Property Personnel**”); but all such Property Personnel shall be employees of the Board and not of the Agent and the Board at its own cost and expense shall defend any suit brought against the Agent or the Board and the Agent jointly or severally in each case on account of the operation or maintenance of the Property, including injuries to any Property Personnel or any others, and the Board shall hold harmless and fully indemnify the Agent from any loss to the Agent on account thereof, unless such loss has been caused by the Agent’s gross negligence or willful misconduct, and the Agent is authorized to cause to be discharged all persons Agent deems unnecessary or undesirable and is authorized to undertake such disciplinary action, in each case as determined by Agent, all subject to such union contracts or other agreements concluded on behalf of the Board with the Board’s written approval.

?? (a) At its own expense, maintain a sufficient staff to perform all administrative, bookkeeping, clerical, receiving and disbursing services required in connection with the performance of its duties hereunder, provided, however, that Agent shall not be responsible for the expense of any of its personnel to the extent set forth on the then current budget for the Condominium.

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(b) To the extent appropriate in the operation of the Property, bill or cause to be billed and collect (as provided in this clause (c)) all Common Charges, or Special Assessments and other amounts due and payable by Unit Owners, rents (if any) from [Common Elements] of the Property and from any Units owned by the Board on behalf of the Unit Owners (collectively, the “**Common Property**”) and other income from the Property and send late notices to any Unit Owners or tenants, as applicable, who have not made timely payments of Common Charges, Special Assessments, interest, late fees or rent, allowing for any applicable grace periods therefore; and, in the event of a default by a Unit Owner or tenant under the Declaration, By-Laws or a lease held by the Board, provided Agent has received the Board’s prior written consent, and on behalf and for additional fees to be reimbursed by the Board, sue for collection of any late payments and/or file a notice of lien on a Unit and/or foreclose on a lien on a Unit and/or seek the Unit Owner’s or tenant’s eviction from same or, at the Board’s expense, retain attorneys to do any of the aforesaid; provided, however, counsel retained by Agent shall be reasonably acceptable to Board. For services rendered by Agent as a witness or expert witness on behalf of the Board either at the Board’s request or if subpoenaed in person by any litigant, in any arbitration, discovery proceeding, deposition or court proceeding (each, a “**legal action**”), by reason of Agent’s role as manager of the Property (a “**court appearance**”), Agent shall be entitled to a fee of \$125 per hour for each hour expended by a representative of Agent in addressing a legal action, whether in a court appearance or expended in document production or otherwise.

Agent will collect, deposit, maintain and disburse security deposits in accordance with the terms of each applicable lease pertaining to any Common Property. To the extent any

such security deposits are required to be placed in an interest bearing account, Agent shall arrange for deposit in such an account and for such interest to be paid to the applicable tenant but, to the extent permitted by law, Agent may retain for itself such portion of the interest earned payable to the Board or Agent in compensation for administering these deposits.

(c) Through the Property Personnel or employees of the Board (if any) or when required, in Agent's reasonable judgment, through independent contractors, cause the [Common Elements] to be repaired, restored, cleaned, added to, improved, altered, replaced or maintained in such condition as may be deemed advisable by Agent, including, but not limited to, as applicable, plumbing, steam-fitting, carpentry, elevator, painting and plastering, sidewalk and roadway repairs and gardening and, in conjunction therewith, to purchase such equipment, furniture, tools, appliances, materials, supplies, and uniforms as Agent shall reasonably deem necessary or advisable, provided that the expense to be incurred for any single repair by an independent contractor or for any single purchase shall not exceed \$2,500 without the prior written consent of the Board, except if part of a pre-approved budgeted item or in the case of emergency repairs, which Agent believes are immediately necessary for the preservation of the Property or the safety of the Unit Owners, tenants, or other persons, or otherwise required to avoid the suspension of any necessary service in the Property or reasonably necessary to avoid the criminal liability of the Board or Agent, in which event such repairs may be made by Agent irrespective of the cost thereof without the prior approval of the Board, but Agent shall, with reasonable promptness, notify the President, Vice President or Treasurer of the Board of such repairs; and in connection with the purchase of any material or services as hereinabove provided, Agent shall use commercially reasonable efforts to make such purchases at the lowest available costs from reliable suppliers and shall allow the Board any rebates or discounts obtained by Agent. Any improvements/repairs to Super's apartment must be approved by the Board, regardless of cost.

(d) Unless otherwise directed in writing by the Board in each instance, and as deemed reasonably necessary by Agent, enter into contracts (on behalf of and at the cost and expense of the Board) for a term of no longer than three (3) years or requiring annual payments not in excess of 10% greater than those in effect during the prior year for the same or similar services, for elevator maintenance, telephone service, window cleaning, steam, gas, electricity and water services, security services, extermination and other services as shall from time to time be approved by the Board and shall do so in the name of the Board or at Agent's option, in Agent's name, provided that any service contract with a term of longer than two (2) years or requiring payment of more than \$15,000 per annum requires the consent of the Board, unless said service contract is part of a pre-approved budget.

(e) Recommend and, with the approval of, on behalf of, and at the cost and expense of, the Board, cause such acts or things to be done in and about the Common Property and to prepare and file all such documents, as shall be reasonably necessary to comply with all laws, statutes, ordinances, rules, orders and regulations (collectively, "**Legal Requirements**") of any federal, state or municipal authority having jurisdiction thereover, and remedy all violations affecting the Common Property (of which Agent has knowledge) charged by any such authorities, the New York Board of Fire Underwriters, the New York Fire Insurance Exchange or similar body. Any one order or violation involving an expenditure of over \$2,500 shall be complied with only with the prior written approval of the Condominium, provided, however, that orders or violations which Agent believes require immediate action necessary for the preservation or safety of the Property or for the safety of the Unit Owners, tenants or other persons or otherwise required to avoid the suspension of any necessary service, or reasonably

necessary to avoid criminal liability of Agent or the Board, may be complied with irrespective of the costs thereof, without the prior approval of the Board, but Agent shall, with reasonable promptness, notify the President, Vice President or Treasurer of the Board of same.

Notwithstanding anything contained in this Agreement to the contrary, the Board hereby acknowledges that (i) in no event shall Agent be liable for the failure of the Board, the Unit Owners and/or the occupants of the Property to comply with any Legal Requirements, the Condominium Documents or the Condominium Policies, and (ii) Agent does not have the authority to provide and shall not be responsible for providing legal advice to the Board regarding the interpretation or application of any Legal Requirements, the Condominium Documents or the Condominium Policies.

(f) On behalf of and at the cost and expense of the Board, cause to be effected and/or maintained, through agent(s) and insurance broker(s) approved by the Board, in such amounts and with such insurance companies as the Board shall approve, such insurance as may be required under the Condominium Documents, and without liability advise the Board, in consultation with such agent(s) and/or insurance broker(s) or such other consultant(s) engaged by the Board as to such other insurances as may be appropriate for the Board, the Common Property, the Property Personnel and the occupants of the Property, and, if requested by the Board, cause the same to be effected and/or maintained, in such amounts and with such insurance companies as the Board shall approve, including, without limitation, fire, extended coverage and rent insurance, public liability, elevator liability, boiler, workmen's compensation, disability, directors' and officers' liability coverage and fidelity bonds covering all members, officers and employees of the Board and Condominium to the extent obtainable, and such additional insurance as the Board may elect to carry, and Agent shall be named as an insured party in all liability policies; and Agent will reasonably cooperate with the Board and/or with any such agent(s), insurance broker(s) and/or consultant(s) engaged by the Board for the purpose of determining the appropriate insurances to be carried by the Board (it being understood that Agent is neither an insurance broker nor an insurance expert and is acting solely in an advisory capacity with respect thereto and any such determination is/will be made by the Board (solely) in conjunction with the advice of any such agent(s), insurance broker(s) and/or consultant(s)). If requested by the Board, Agent will (on behalf of the Board) make the determination(s) as to the insurance(s) to be carried by the Board and cause such insurances to be effected and/or maintained (on behalf of and at the cost and expense of the Board) in such amounts and with insurance companies as Agent shall select in its sole discretion, it being understood that, in any such event, Agent (x) is undertaking the foregoing solely as an accommodation to the Board, (y) shall not suffer or incur any liability whatsoever in connection with its performance of any of the foregoing, (other than as a result of Agent's gross negligence or willful misconduct) and (z) if Agent elects (which election Agent may make in its sole discretion), shall be entitled to rely on the advice of any insurance agent(s), broker(s) and/or consultant(s) which Agent may select in connection with the foregoing or of any persons directly employed by the Board.

(g) Deposit all monies received by it for or on behalf of the Board to the account of the Board in one or more special bank account(s) selected and maintained by Agent for such purpose and no such monies shall be commingled with other funds of Agent; Agent shall monthly keep the Board advised of the balance of such accounts and Treasurer of the Board shall be permitted access to all online accounts.

(h) Check all bills received for services, work and supplies ordered in connection with maintaining and operating the Common Property and, to the extent provided

with funds therefor by the Board, pay or cause to be paid all such bills as well as payroll, payroll taxes and union dues of the Property Personnel and employees of the Board (if at any time the Board has any employees), all other expenses in connection with Property Personnel sums payable on any mortgage encumbering any Common Property and any taxes, water charges, sewer rent and assessments (collectively, “**Property Charges**”) assessed with respect to any of the Common Property, as and when the same shall become due and payable.

(i) Cooperate with the Board’s tax certiorari attorneys in connection with [ascertaining the tentative assessed valuations of the land on which the Property is situated and] the assessment of the Common Property and in connection with any tax certiorari proceedings, provided, however, that Agent shall not be required to perform any function or execute any documentation which may reasonably result in the imposition of any liability on Agent. If the Board shall not retain regular tax certiorari attorneys, Agent shall (on behalf of and at the expense of the Board) retain special counsel (with the Board’s approval) for this purpose.

(j) Supervise the moving in of Unit Owners and tenants, and, as far as possible, arrange the dates thereof so that there shall be a minimum of disturbance to the operation of the Property and of inconvenience to other Unit Owners and tenants.

(k) Consider and, when Agent deems it reasonable, attend to (subject to and in accordance with the applicable provisions, terms and conditions of the Condominium Documents) the complaints of Unit Owners and lawful tenants and advise the Board of any complaints not attended to, and the reason therefor.

(l) If at anytime the Board shall employ any employees, cause to be prepared and filed the necessary forms for unemployment insurance, social security taxes and withholding taxes and all other forms required by any federal, state or municipal authority relating to such employment, provided that any costs and expenses associated with such filings shall be the responsibility of the Board. Agent, at the Board’s expense, may engage a payroll service company for the preparation, payment and filing of payroll and any payroll related forms in connection with any Property Personnel or other Board employees, if any.

(m) Render (or cause to be rendered) to the Board monthly statements of receipts and expenditures on a cash basis for the preceding month and for the year to date, not later than the 20th business day of each month for the preceding calendar month. A copy of each such monthly statement shall be sent by Agent to the President and Treasurer of the Board, provided that the cost of reproduction shall be borne by the Board.

(n) Under the supervision of the accountant(s) retained by the Board, maintain in a satisfactory manner, separate and accurate books of account, check books, minute books, records of Unit, mortgages that are liens on any Unit, to the extent same are received by Agent) and any payroll, records of the condominium, and maintain orderly files containing rent records, leases, bills, vouchers, correspondence, insurance policies and other documents and papers held by Agent (collectively called “**Documents**”) pertaining to the Common Property, all of which shall be and remain the property of the Board. Agent shall, upon request of the Board, make all of said Documents available to the Board and its officers, accountants, attorneys and other representatives and shall deliver same to the Board or its agents or representatives on demand.

(o) Cooperate with the accountant(s) retained by the Board in regard to the annual audit each year of the books of account of the Condominium, including an annual report

of the Condominium for the year then ended, to be performed by said accountant(s). If the Board shall so request, a copy of each such annual report shall be provided by Agent to each Unit Owner and the cost thereof shall be borne by the Condominium (including photocopying, postage, etc.).

(p) Cooperate with the accountant(s) retained by the Board in regard to the preparation and filing by said accountant(s) on behalf of the Board of federal, state, city and any other income and other tax returns required by any governmental authority.

(q) In collaboration with the Board's Treasurer, prepare and submit annually to the Board a proposed operating budget (for the Board's approval in accordance with the applicable provisions, terms and conditions of the Condominium Documents) setting forth the anticipated income and expenses of the Condominium for the ensuing year and notify Unit Owners of annual and all other assessments of [Common Charges] as determined by the Board. For so long as the proposed budget is not approved by the Board, the most recent approved budget shall continue in effect, and Agent is authorized to perform the services hereunder substantially in accordance with said most recent approved budget subject to any greater authority provided for in the Condominium Documents with respect to carryover budgets pending approval of a new budget.

(r) Cause a representative of its company to attend annual meetings of the Unit Owners and the requested meetings of the Board and, if desired by the Board (and provided reasonable advance notice is furnished to the Agent), provide an administrative assistant to record the minutes of such meetings.

(s) Prepare and send out all notices of Board meetings and Unit Owner meetings and such other letters and reports as the Board may request (with the cost of reproduction, postage, etc. to be borne by the Board); and when requested, arrange for a suitable meeting place and prepare agendas for such meetings.

(t) To the extent Agent has received notification of the name and address of any mortgagee, which is holder of a mortgage(s) encumbering any Unit(s), in accordance with Article _____ of the By-Laws, send to such mortgagee(s), by registered or certified mail, copies of all notices of default in the payment of Common Charges or in compliance with the By-Laws or Rules and Regulations of the Condominium, given to the owner of such Unit.

(u) Act as the Board's agent for the service of process and notify the President and Secretary of the Board of Agent's receipt of any process affecting the Condominium and/or the Board.

(v) Notify the Board in writing of any material violation of the Condominium Documents by any Unit Owner or occupant about which Agent has actual knowledge, and take such action as reasonably deemed appropriate by Agent to enforce compliance with the Condominium Documents and/or cause such violation to be remedied, as may be requested by the Board in accordance with the Condominium Documents.

(w) If requested by the Board, coordinate and assist in processing and negotiating insurance claims for losses sustained by the Condominium with respect to the Common Property. Such services shall be performed at no additional fee to the Board, unless the damage to the Common Property exceeds \$5,000.00. When the damage to the Common Property exceeds

\$5,000.00, and the Board authorizes Agent to negotiate with the insurance carrier with respect to the adjustment of the amount to be paid to the Board for such damages, the Board will pay Agent 5% of any insurance recovery for services negotiating such claim. Otherwise, Agent shall cooperate in its role as managing agent by making all relevant records and information available to any party authorized by the Board to act on its behalf in negotiating such insurance claim. Agent shall not settle any insurance claim made against the Board without the prior consent of the Board.

(x) If requested by the Board, act as a consultant in assisting the Board in procuring a new mortgage, refinance an existing mortgage or obtain unsecured financing for the Board. For any such loan procured through the efforts of Agent, the Board shall pay Agent, upon the closing of the mortgage or loan, a loan coordination fee equal to [one percent (1%)] of the principal amount of the mortgage or loan, except that if the loan is a refinancing of a mortgage with an existing mortgagee, the Board shall pay Agent upon such refinancing a loan coordination fee equal to one-half of one percent (1/2%) of the principal amount of the mortgage.

Agent shall cooperate in its role as managing agent by making all relevant documents and information available to any party authorized by the Board to act on its behalf in obtaining and negotiating such mortgage, loan or refinance. For Agent's services in preparing and coordinating such information, Owner shall pay Agent a loan coordination fee at a rate of \$125 per man-hour.

(y) Generally, do all things reasonably deemed necessary or desirable by the Board for the proper management of the Property, provided, however, in the event other services are required that are not generally within the scope of the services enumerated in this **EXCLUSION** Section 5 (including, without limitation, compliance with a new administrative or filing requirement), Agent shall be entitled to additional compensation from the Board for performing such services, as the Board and Agent shall mutually and reasonably agree (it being understood that Agent shall not be required to perform any such services prior to an agreement on the applicable additional compensation).

(z) Agent shall have the authority to prepare and secure signs to the Building with Agent's or its parent's or affiliate's name thereon, subject to the written approval of the Board and applicable law and the Condominium Documents.

6. **Authority of Agent.** Subject to the conditions and limitations set forth in Section 5, the Board authorizes Agent to perform any act or do anything reasonably necessary or desirable to carry out the intent and purposes of this Agreement. Subject to the conditions and limitations set forth in Section 5, everything done by Agent shall be done as agent of the Board and all obligations or out-of-pocket expenses incurred shall be solely for the account, on behalf and at the expense, of the Board. To the extent obtainable, all purchases or commitments made by Agent for the Board shall be in writing and shall provide or be deemed to provide that Agent is acting as agent for the Unit Owners, who shall be severally liable only in proportion to their respective [Common Interests] and that neither Agent nor the Board nor any member thereof shall be liable or responsible with respect to any such commitment or purchase. Any payments made by Agent hereunder shall be made out of such funds as Agent may from time to time hold for the account of the Board or as may be provided by the Board. Agent shall not be obligated to make any advance to or for the account of the Board or to pay any amount (including, without limitation, any Direct Expenses (as defined below)) except out of funds held or provided as aforesaid, nor shall Agent be obliged to incur any liability or obligation unless the Board shall furnish

Agent with the necessary funds for the discharge thereof. If Agent shall advance voluntarily for the Board's account any amount, for the payment of any proper obligation or necessary expense authorized hereunder to be paid in connection with the maintenance or operation of the Property (including, without limitation, any Direct Expense), the Board shall reimburse Agent therefor with reasonable promptness after demand. Nothing herein contained, however, shall be construed to obligate Agent to make any such advances. Agent shall confer fully with the Board in the performance of its duties under this Agreement.

In the event of the existence of a substantial shortfall in the funds available to properly maintain the Property, Agent shall give the Board written notice of such breach and the Board shall have the right to cure same within ten (10) days after receipt of such notice.

Further supplementing the provisions of Section 5(h) hereof, the Agent shall establish and maintain, in a manner to indicate the custodial nature thereof, a separate bank account for the deposit of the moneys of the Board, with authority to draw thereon for any payments to be made by the Agent to discharge any liabilities or obligations incurred pursuant to this Agreement, and for the payment of the Agent's fee as well as any Direct Expenses. Agent shall not be responsible for the solvency of the financial institution(s) holding the Board's funds.

7. **Indemnification; Reimbursement.** The Agent shall not be liable to the Board for any loss or damage not caused by the Agent's own gross negligence or willful failure to comply with its obligations hereunder, nor shall Agent be liable to the Board for any loss or damage caused by other parties properly engaged to perform services for the Board pursuant to this Agreement.

Without limiting the foregoing, the Board agrees:

(a) To indemnify and hold Agent and its affiliates, their respective shareholders, directors, officers, partners, employees, representatives, assigns and agents (the "**Indemnified Parties**") harmless from (i) any actual, out-of-pocket loss, claims, demands, liability, damages (excluding any special, punitive, or consequential damages), injunctive relief, fines, penalties, costs and expenses, statutory or otherwise (including reasonable attorneys' fees) (collectively, "**Claims**") sustained or incurred for damages or injury to any person or property in, about and in connection with the Property, from any cause whatsoever, unless such injury is caused solely by the Agent's own gross negligence or willful misconduct in the performance of Agent's obligations under this Agreement, (ii) any Claims for acts performed by the Agent pursuant to this Agreement or acting under the express or implied instructions of the Board (unless such Claim is caused solely by the Agent's own gross negligence or willful misconduct in the performance of Agent's obligations under this Agreement), (iii) any Claims arising out of or resulting from, or being in any way connected with any liens filed by or on behalf of any architects, contractors, engineers, or others against the Property (or any portion thereof), the Board or the Indemnified Parties, (iv) any Claims that may arise based on the Agent's status as managing agent (as that term or any similar derivative term is used in any laws) of the Property, and (v) any Claims for any act or omission of or attributable to the Board or an employee of the Board.

(b) To reimburse Agent within ten (10) days of demand for any monies which Agent is required to pay out for any reason whatsoever, either in connection with, or as an expense in defense of, any Claim arising from any, civil or criminal action, proceeding, charge or prosecution made, instituted or maintained against any Indemnified Party or the Board and any Indemnified Party jointly or severally, affecting or due to the condition or use of the Property or

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acts or omissions of Agent (or its officers, agents or employees) or employees of the Board, or arising out of or based upon any law, regulation, requirement, contract or award relating to the hours of employment, working conditions, wages and/or compensation or other rights and/or benefits of employees or former employees of the Board (including, without limitation, any Equal Employment Opportunity WARN Act, or other employee Claims arising out of an employee termination).

(c) To defend (with counsel selected by Agent) promptly and diligently, at the Board's sole cost and expense, any claim, action or proceeding brought against any Indemnified Party, or any Indemnified Party and the Board jointly or severally arising out of or connected with any of the foregoing, and to hold harmless and fully indemnify any Indemnified Party from any judgment, loss or settlement on account thereof.

Nothing contained above shall relieve Agent from responsibility to the Board for Agent's willful failure to perform its obligations under this Agreement.

The foregoing indemnities in favor of Agent are conditioned upon the Agent: (i) notifying the Board, in writing, with reasonable promptness after receipt of information concerning any Claim for which indemnity is sought, and (ii) reasonably cooperating with the Board and its attorneys in resisting and defending any claim or any action or proceeding arising therefrom, including, without limitation, producing, at the appropriate place or places and reasonable times such witnesses under its control as may be requested by the Board or its attorneys.

It is expressly understood and agreed that the provisions of this paragraph shall survive the termination of this Agreement, but this shall not be construed to mean that liability of the Board does not survive as to other provisions of this Agreement.

Without limiting the foregoing (including, without limitation, the provisions of Section 5(g) hereof), the Board (a) will obtain and maintain during the term of this Agreement (i) comprehensive general and umbrella liability insurance, (ii) crime insurance (which policy shall contain a managing agent's rider) (in each case of clause (i) and clause (ii) with limits acceptable to Agent in its reasonable judgment), (iii) workmen's compensation insurance and (iv) employer's and director's and officer's liability insurance, (b) include Agent as a party insured under each such insurance policy and (c) prior to the commencement of each such policy, deliver to Agent a signed copy of the policy. If Board is able only to deliver a certificate evidencing the policy by the policy commencement date, then the Board shall deliver the signed policy within 30 days of the commencement date. The Board's insurance coverage, to the extent obtainable, for Agent, as additional insured or otherwise, shall apply as primary and non-contributing insurance before any other insurance or self insurance, including any deductible maintained by or provided to the additional insureds. Notwithstanding anything to the contrary contained herein, the Indemnified Parties shall not be liable to the Board for any matter covered by the foregoing insurance policies (or any other insurance policies which may be maintained by the Board).

8. **Compensation.** The Board shall pay Agent as compensation for services hereunder, other than for leasing of space or sale of Units (or such other service for which additional compensation is provided herein), an annual fee of _____. All annual fees to Agent shall be payable in equal monthly installments on the first day of each month and Agent may deduct the same from the Common Charges or other funds collected by Agent for the account of the Board.

If Agent is called upon to perform any extraordinary services not customarily a part of the usual services performed by a managing agent, Agent shall receive an additional fee therefor in an amount to be agreed upon between the parties, and in each instance, where Agent is to receive an additional fee, Agent shall give the Board prior written notice thereof and shall not be required to perform such services prior to an agreement on the fee. Without limiting the foregoing, it is understood and agreed that services in connection with the supervision of major alterations or capital improvements (costing in excess of \$20,000) are outside the scope of Agent's obligations hereunder (it being understood that the Agent's responsibility in such instance shall be limited solely to reasonably cooperating with the construction manager or other supervisor engaged by the Board with respect thereto so as to endeavor to see that (i) the work is done with as little interference or interruption of building services as possible, and (ii) all reasonable precautions are taken to preserve and protect the Common Property and the property of the Unit Owners and the other lawful occupants of the Property). If such services shall be requested by the Condominium and agreed to by Agent, Agent shall be paid a fee equal to 6% of the total cost of such alterations or improvements.

The Board shall impose upon every seller, renter, mortgagor or owner of a unit, the following fees to be paid directly to Agent for actual services performed by Agent in connection with processing the applications for sale, rental, renewal of rental or mortgaging or for coordinating, reviewing or interacting with contractors or architects on any aspect of the alteration of the unit:

- (i) \$500.00 for sale;
- (ii) \$350.00 for rental;
- (iii) \$150.00 for (re)financing; and
- (iv) before any work can commence, \$300.00 in connection with the alteration

or renovation of a unit where the alteration is more than \$5,000, but not in excess of \$20,000 of work. In the event an alteration entails more than \$20,000 of work, Agent shall be entitled to a fee equal to \$300 or 2% of the cost of the alterations, whichever is greater. There is no alteration fee for work less than \$5,000.

The Board shall reimburse the Agent for all reasonable out of pocket expenses incurred by Agent in the performance of its duties under this Agreement including, but not limited to, postage and messenger expenses, photocopying (internal and external), courier, record storage and retrieval charges, filing fees and other similar charges and expenses (collectively, "**Direct Expenses**").

9. **Term; Termination.** The term of this Agreement shall commence on _____ and shall remain in effect for a term of one (1) year unless sooner terminated as provided herein. Thereafter, the term hereof shall automatically renew for one (1) year periods until terminated as hereinafter provided in this paragraph. The annual fee payable to the Agent pursuant to the first paragraph of Section 8 hereinabove shall automatically increase by five percent (5%) upon each annual anniversary date starting with the first day after the end of the initial one (1) year term. At any time after the initial one (1) year term, this Agreement may be terminated at the option of either party at the end of any calendar month upon not less than sixty (60) days' prior written notice from one party to the other.

In the event of the demolition of all of the Property or the withdrawal of the Property from the Condominium Act, then this Agreement may be terminated at the option of

either party at the end of any calendar month upon not less than sixty (60) days' prior written notice from one party to the other.

If Agent shall fail to perform or abide by any of its services, agreements, representations, warranties, covenants, or obligations herein, and shall fail to cure said failure within 30 days of notice of said failure sent by the Board to Agent, or if such failure cannot reasonably be cured within said 30 day period, if Agent shall fail to commence its cure within such period and prosecute same with diligence and continuity through completion, the Board shall thereafter have the right to terminate this Agreement at the end of any calendar month on not less than thirty (30) days' prior written notice to Agent.

If the Board shall unreasonably refuse to comply with or abide by any proper rule, order, determination, ordinance or law of any federal, state or municipal authority having jurisdiction or asserting jurisdiction, Agent may terminate this Agreement at any time on ten (10) days' prior notice in writing to the Board. If the Board shall fail to perform or abide by any of its services, agreements, representations, warranties, covenants, or obligations herein, and shall fail to cure said failure within 10 days of notice of said failure sent by the Agent to the Board, the Agent shall have the right to terminate this Agreement on not less than ten (10) days' prior written notice to Agent.

If this Agreement shall terminate on other than the last day of a month, then the monthly installment of compensation payable to Agent shall be prorated on a per diem basis. Upon termination, the parties shall account to each other with respect to all uncompleted business, and Agent shall deliver to the Board (or the Board's new agent) all leases, books, records and other documents owned by or belonging to the Board which may be in the possession of Agent.

In the event a petition in bankruptcy is filed by the Board or Agent, or in the event that an involuntary petition is filed against the Board or Agent and not discharged or bonded against within forty-five (45) days, or in the event that the Board or Agent shall make an assignment for the benefit of creditors or take advantage of any insolvency act, the other party hereto may forthwith terminate this Agreement without notice.

10. **Fidelity Bond.** Agent at the expense of the Board, shall forthwith procure a fidelity bond satisfactory in form to the Board, and issued by a bonding, insurance or casualty company satisfactory to the Board, pursuant to which the Board will be held harmless by the surety in an amount up to \$100,000 (for each occurrence) for any loss of money or other personal property belonging to the Board or for which the Board is legally liable, caused by larceny, embezzlement, forgery, misappropriation, wrongful abstraction or any dishonest or fraudulent acts committed on or after the date hereof, by Agent, its directors, officers or employees. Agent agrees to keep said bond in full force and effect throughout the term of this Agreement.

11. **Relationship of Parties.** Nothing in this Agreement, or otherwise, shall, or shall be construed as to, constitute or create a partnership, joint venture, employer/employee relationship between the Board and Agent or to cause Agent to be responsible in any way for the debts or obligations of the Board or any other party. The duties to be performed by Agent under this Agreement shall be performed and assumed by Agent as an independent contractor and not as an agent, partner, employee, joint venturer or lessee of the Board or in any other way as a representative of the Board.

12. **Captions.** Captions have been inserted at the beginning of each section hereof for convenience of reference only and such captions shall not affect the construction or interpretation of any such section.

13. **Notices.** All statements, requests and notices hereunder shall be in writing and shall be deemed to be received when either (i) delivered in person, (ii) three business days after deposit in a regularly maintained receptacle of the United States mail as registered or certified mail, postage prepaid, (iii) when received if sent by private courier service, or (iv) on the day on which the party to whom such notice is addressed refuses delivery by mail or by private courier service and (b) addressed to the applicable party at its address first above written. Any party may designate a change of address by written notice to the other party by giving at least ten (10) days' prior written notice of such change of address.

14. **Counterparts.** This Agreement may be executed in more than one counterpart which, taken together, shall constitute the original of this Agreement.

15. **Assignment.** This Agreement, and every provision hereof, shall bind, apply to and run in favor of the Board and Agent and their respective successors in interest and may not be changed, waived or terminated orally. The Board may not assign this Agreement without the prior written consent of Agent. Agent may, without the consent of the Board, assign this Agreement to: (a) any entity controlling, controlled by or under common control with Agent; or (b) any entity which is the successor by merger, consolidation or reorganization of Agent. Nothing in this Agreement shall prohibit or be deemed to prohibit the: (a) assignment of this Agreement, and/or (b) the pledge of any sums received by Agent under this Agreement, by Agent to any lender as collateral security for debt of the Agent and/or Agent's affiliates. Upon any permitted assignment of this Agreement and the assumption of this Agreement by the assignee, the assignor shall be relieved of any obligation or liability under this Agreement arising after the effective date of the assignment.

16. **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term to other persons or circumstances, shall not be affected thereby, and each term and provision of this Agreement shall be invalid and be enforced to the fullest extent permitted by law.

17. **Agent's License.** Agent represents to the Board that it is duly licensed as a real estate broker under the laws of the State of New York, and it shall maintain in good standing and renew such license throughout the term of this Agreement.

18. **Authority.** The Board hereby represents and warrants to Agent that the Board has authorized and makes all of the representations, warranties, covenants and agreements herein and is hereby entering into this Agreement on behalf of all of the Unit Owners.

19. **The Board.** All references herein to the Board shall be deemed to mean all members of the Board of the Condominium as the same may be constituted from time to time pursuant to and in accordance with the Condominium Documents, provided, that Agent may rely upon a written direction, statement, consent, approval or authorization given or signed by any officer of the Board, acting alone. It shall be deemed and construed without further agreement between the parties hereto and/or their successors and assigns that the members of the Board, as constituted at any time in question, have, in their capacity as Board members, assumed and agreed to carry out all of the covenants and obligations

of the Board arising or to be performed under this Agreement regardless of when such matters arose or arise.

20. **Limitation of Liability.** Notwithstanding any provision of this Agreement to the contrary, no member of the Board shall have any personal liability with respect to this Agreement. In addition, the liability of any Unit Owner with respect to this Agreement shall be limited to such proportionate share of the total liability as the interest of such Unit Owner bears to the aggregate [Common Interests] of all Unit Owners, and to the extent permitted by applicable law, such liability shall be further limited to such Unit Owner's interest in his Unit and its appurtenant [Common Interest].

21. **Merger; Entire Agreement.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior communication or agreement with respect thereto.

22. **Agent's Other Business Interests.** The Board acknowledges that Agent and/or its affiliates may have direct or indirect interests in various other activities and undertakings not related to the Condominium and/or the Property, including, without limitation, responsibility for the management of other properties and/or condominiums located within the same geographic area as, or neighboring or adjacent to, the Property.¹

23. **Agent's Employees.** The Board recognizes that Agent is engaged in the specialized and competitive property management business, and Agent invests time and money in the training and development of its employees at all levels, which promotes productivity, efficiency and the employment of a competent and specialized workforce. Accordingly, the Board agrees to refrain from hiring, directly or indirectly, any person(s) who is or was employed by Agent during the term of this Agreement and for one year following the termination of this Agreement without first obtaining written permission of the Agent.

24. **Agent's Building Offices.** The Board will provide Agent with such space in the location or locations specified in the Condominium Documents (if any) to be used as offices for personnel employed by Agent and working at the Property pursuant to this Agreement, and the costs and expenses for the operation and equipping of such offices will be an expense of the Board.

25. **Environmental Hazards.** The Board has not received any notice from any governmental agency or authority of any violation at the Property of any environmental law which has not been cured or any notice of any proceeding, inquiry or claim pending, or threatened, with respect to any environmental health and safety liabilities; and to the best of the Board's knowledge, there has not been any release not fully and adequately remediated under all environmental laws, of any hazardous materials at, to or from the Property or at any other locations where any hazardous materials generated from the Property have been stored, treated, recycled or disposed of, whether by the Board or by any other person or entity for whose conduct it is or may be held responsible.

26. **Miscellaneous.**

(a) This Agreement and the obligations of the Board and Agent shall be interpreted, construed and enforced in accordance with the laws of the State of New York, without regard to the principles of conflicts of law.

(b) Except as prohibited by law, the parties shall, and they hereby do, expressly waive trial by jury in any litigation arising out of, connected with, or relating to this Agreement. With respect to any matter for which a jury trial cannot be waived, the parties agree not to assert any such claim as a counterclaim in, nor move to consolidate such claim with, any action or proceeding in which a jury trial is waived.

(c) The parties hereto acknowledge and agree that all disputes arising, directly or indirectly, out of or relating to this Agreement shall be dealt with and adjudicated solely in the state courts of New York or the federal courts sitting in New York, and hereby expressly and irrevocably submit to the jurisdiction of such courts in any suit, action or proceeding arising, directly or indirectly, out of or relating to this Agreement.

(d) This Agreement is not intended to create, and shall not create, any rights in any person or entity who is not a party to this Agreement.

(e) The headings of the titles to the several sections of this Agreement are inserted for convenience only and are not intended to affect the meaning of any of the provisions hereof. As used herein, the singular shall include the plural and the plural the singular; and the masculine, feminine and neuter shall each include the other, unless the context dictates otherwise.

(f) No modification, amendment, release, discharge or waiver of any provisions hereof shall be of any force, effect or value unless in writing signed by the parties to be charged. A waiver of any of the terms and conditions of this Agreement shall not be deemed a waiver of such terms and conditions on any future occasion.

(g) No failure on the part of either party to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or remedy hereunder shall operate as a waiver thereof, and no single or partial exercise by either party of any right, power or remedy hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy by such party. The remedies provided herein are cumulative and are not exclusive of any remedies provided by law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

THE BOARD OF MANAGERS OF _____

By: _____
Name:
Title:

XL REAL PROPERTY MANAGEMENT

By: _____
Name:
Title: