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# DECORA PARK ASSOCIATION MANAGEMENT AGREEMENT

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This AGREEMENT entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, between DECORA PARK ASSOCIATION, a Michigan non-profit Corporation (the "Association"), established to maintain and to manage the affairs of DECORA PARK CONDOMINIUM ASSOCIATION, a Condominium community (the "Community") consisting of 181 units, located in New Haven, Macomb County, Michigan, and MICHIGAN CONDOMINIUM MANAGEMENT COMPANY (the "Agent"), a Michigan Corporation, having its principal office at 22725 Greater Mack Avenue, St. Clair Shores, Michigan 48080-2023.

## WITNESSETH:

In order to provide and assure professional management of the Community, and in consideration of the terms, conditions, and covenants hereinafter set forth, the parties hereto agree as follows:

### I. APPOINTMENT OF AGENT

Pursuant to its Articles of Incorporation, Master Deed, and the authority granted it in the Condominium Bylaws, the Association hereby appoints the Agent and the Agent hereby accepts the appointment as exclusive managing agent of the Community subject to the terms and conditions hereinafter provided. The Agent shall perform the following services in the name of and on behalf of the Association, and the Association hereby gives the Agent the authority and powers required to perform these services.

### II. MANAGEMENT FEE

The Association agrees to pay Agent as its compensation for services performed during the term of this Agreement (except for additional costs which are specified elsewhere in this Agreement), **a monthly fee of \$905.00 (equivalent to \$5.00 per unit per month)**. Said management fee shall remain in force for the full term of this Agreement (as described under Article VIII: Agreement Term). Any increases in fees require the mutual consent of both contracting parties and documented in a formal amendment to this agreement. Agent will give express written notice to the Association of any changes in rates for additional services (as listed in Exhibit A: Schedule of Charges) not less than thirty (30) days prior to effective date.

All such considerations for a given month shall be paid to the Agent on the tenth (10<sup>th</sup>) business day of each month for services rendered in the preceding month. The Agent shall make no further charge for the services of the Community Association Manager and the other services of the Agent's professional staff, except as otherwise provided in this Agreement or mutually agreed to by the parties in writing.

### III. DUTIES OF THE ASSOCIATION

In order to assure efficient management transition and facilitate effective operation, the Association shall to the extent possible:

- A. Furnish the Agent with a complete set of Condominium Documents, including: Master Deed, Condominium Bylaws, Articles of Incorporation, Association Bylaws and Rules and Regulations, if any, and all recorded Amendments.
- B. Provide legal survey, building plans, and specifications for the Community, if available.
- C. Provide Agent with Association Rules and Regulations, if available.
- D. Inform the Agent of standards to be maintained with respect to the Community.
- E. Provide the Agent with a set of books and financial reports for the Community.
- F. Provide past and future copies of Minutes from Board of Directors' Meetings for audit purposes.
- G. Assure direct, consistent and effective communication between the Board of Directors and Agent.
- H. Provide copies of guarantees and warranties for the construction of the Community, if available.
- I. Provide Agent with other pertinent information and available records that may be useful in discharging the duties of Agent and/or carrying out the directions of the Board of Directors.

#### **IV. DUTIES OF THE AGENT**

The Agent shall:

##### **A. ACCOUNTING**

1. Establish and maintain a separate bank account(s) as Agent for the Association in a commercial bank, whose deposits are insured by the Federal Deposit Insurance Corporation, and/or other government insuring body, and which is authorized to do business in Michigan. To minimize costs and service charges for the Association, Agent shall select the bank for the accounts. The Agent shall have the authority to draw on such account from any commercial bank for any payment to discharge any liabilities or obligations incurred by, or on behalf of the Association pursuant to this Agreement. All such payments shall be subject to the limitations as set forth in this Agreement. Reserves will be kept in a separate account and invested as directed by the Association Board.
2. Provide one set of payment coupons per unit per year; the cost of which shall be borne by the Association.
3. Receive and account for all general or monthly assessments due to the Association for operation of the Condominium and all rentals or other payment from concessionaires, if any. Agent shall also set up, receive, and account for all additional or special assessments levied by the Association.
4. Collect all general assessments, additional assessments, late charges, and special assessments due from the Co-owner pursuant to the Association Bylaws and in accordance with Article IV, Section A, Paragraph 3 of this Agreement, provided however, the Association shall cooperate with the Agent and provide such assistance as it may reasonably request in enabling the collection of such assessments.
5. Process late notices after the late charge date of each month and furnish the Board with a schedule of all delinquent accounts. The Agent shall take such collection action as is authorized by the Association Bylaws and the adopted collection policy provided however, the Agent shall have no

responsibility for collection of delinquent assessments or other delinquent charges except sending notices of delinquency and providing information for the preparation of liens and/or foreclosure action to the Association's attorney or designated collection agent. Agent will prepare initial demand letter at no charge. Assisting the attorney or collection agent shall be billed on an hourly basis in accordance with Article VII hereof.

6. Make all payments required to be made by the Agent under the terms of the Agreement when due, out of sums as are available from the Association's account. All debts paid by the Agent on behalf of the Association shall be paid on time so as to take advantage of discounts and not to incur late charges, interest or penalties subject to the availability of sufficient Association funds. The Agent is authorized to pay any amounts owed to the Agent by the Association from such account including the management fee and any funds advanced to the Association. Agent shall not be responsible to advance funds to the Association to cover shortfall in funds to cover operating expenses or for any other purpose.
7. Assist the Board of Directors in the preparation of an operating budget for the forthcoming fiscal year in conformity with the provisions of the Association Bylaws. Each such budget shall be submitted to the Board of Directors prior to the end of the annual fiscal period for which it has been made. The Agent shall not be responsible for variances between the budget and actual income or expenditures since the budget is an estimate to be used only as a guide and management tool.
8. Maintain records showing all its receipts and expenditures relating to the Condominium and shall promptly submit to the Board a cash receipts and disbursements statement for the preceding month and a statement indicating the balance or deficit in the Association's account before the Board Meeting. Within 30 days after the end of each fiscal year, the Agent shall submit to the Board a summary of all receipts and expenditures relating to the Association for the preceding year, provided that this service shall not be construed to require the Agent to supply an audit or a tax return. Agent shall have the duty to maintain all the Association's books in accordance with generally accepted accounting principles.
9. Prepare (or cause to be prepared) in conjunction with the accountant or a similarly qualified professional, for execution and filing by the Association all forms, reports and returns required by law in connection with federal and state income tax, Michigan general corporation law, unemployment insurance, workmen's compensation insurance, disability benefits, social security and other similar taxes now in effect or hereafter imposed. Any review, audit or tax return required by the Board or the governing documents shall be prepared at the Association's expense by accountants of the Board's selection.
10. Bond, in a manner satisfactory to the Association, all employees of the Agent who are responsible for handling the Association's funds, without expense to the Association.

## B. MANAGEMENT

1. At the Association's expense, cause the common elements of the Association to be maintained according to such standards as may, from

time to time, be established by the Board of Directors, including, but not limited to, normal maintenance and repair work as may be necessary, subject to those limitations imposed by the Master Deed and Condominium Bylaws in addition to those contained herein. Prior to retaining a contractor, Agent shall obtain proof of contractor's insurance, including but not limited to workmen's compensation and operations liability insurance. Place orders for such equipment, tools, appliances, materials and supplies as necessary to properly maintain the Condominium.

2. Take such action, upon authorization of the Board, as may be necessary to comply with any and all orders or requirements affecting the Community as may be placed thereon by any Federal, State, County or Municipal authority having jurisdiction therefore, subject to the limitations imposed by this Agreement. The Agent shall promptly notify the Board of Directors in writing of all such orders. However, Agent shall not take any action so long as the Association notifies Agent in writing that it is contesting, or has affirmed its intention to contest any such order or requirement.
3. Maintain records showing the written complaints and service requests made by each Co-owner together with the action taken with respect to each request. The Agent, at its discretion or upon the request of the Board of Directors, shall report all such requests and complaints to the Board and provide reasonable recommendations whenever appropriate. Agent shall include copies of all co-owner correspondence and a list of all incoming work orders along with a brief description of their disposition with each monthly Board report. Agent shall promptly warn the Board in its report if a budget overrun is foreseen.
4. Hire, pay and negotiate collective bargaining agreements with contractors, laborers, engineers, janitors, and other personnel required in maintaining and operating the Condominium properly. All such personnel shall be independent contractors of the Association and paid with Association funds. It is agreed that neither the Agent, nor its employees, or other contractors are deemed employees of the Association, but are independent contractors working for the Association. Agent shall not hire any direct employees for the Association, unless specifically authorized to do so by the Board of Directors. Agent will collect and maintain current certificates of insurance in a form satisfactory to them and their insurer for all such persons.
5. Cause to be placed and kept in force all insurance policies required by the Condominium Bylaws or the Board of Directors. Agent shall cooperate with the Board in reporting all accidents or claims for damage relating to the Co-ownership, operation and maintenance of the common elements of the Association. Should the management Agent perform the tasks of a general contractor, including but not limited to, acting as the supervisor for construction or reconstruction activities for the Association, act as administrator, investigator, supervisor, coordinator, processor or follow up for insurance losses, or any other insurance claim matters on behalf of the Association, Agent shall be compensated at additional hourly rates for such services as outlined in Article VII of this Agreement.
6. Notwithstanding any other provision of this Agreement, the Agent has no authority or responsibility for maintenance of or repairs to individual dwelling units in the Condominium except as provided in the Master Deed. Such maintenance and repairs shall be the sole responsibility of the Co-

owner individually. Each private dwelling unit owner may contract with the Agent or Agent's affiliates on an independent basis for the provision of certain maintenance and other related services that will be paid for in accordance with the agreement between the Agent and the individual unit owner.

7. In discharging its responsibilities under this Agreement, the Agent shall not make any expenditure or incur any non-recurring contractual obligation exceeding \$ 1,000.00 unless on the approved budget without the prior consent of the Board. It is further understood that Agent shall not incur liabilities (either direct or contingent) which will at any time exceed the aggregate of \$ 2,500.00 or any liability maturing more than one (1) year from the creation thereof, without first obtaining the express written authorization of the Board of Directors.
8. Notwithstanding these limitations, the Agent may, on behalf of the Board and with a reasonable attempt of prior notification, expend any amount or incur a contractual obligation in any amount required to deal with emergency conditions, which may involve a danger of life or property or may threaten the safety of the Condominium, or the Co-owner and occupants or may threaten the suspension of any necessary service to the Association.
9. Agent shall provide emergency service to the Association that is available twenty-four (24) hours a day / three hundred sixty-five (365) days a year. Any such requests for emergency services will be addressed in a timely, responsible and professional manner. Agent shall document all service requests (including emergency service) in a regular report for monthly review by the Board. Agent shall be compensated for emergency service pursuant to Article VII hereof.

#### C. ADMINISTRATIVE

1. Maintain records relative to the management and operation of the Association, which shall be available for examination by the Board of Directors or Co-owners during normal business hours upon reasonable advance notice to the Agent. Association records may include, but are not limited to, work orders, unit files, Co-owner correspondence, bids, financial statements, etc. The Board of Directors or its legal counsel shall determine which records Co-owners shall have access. Additionally, the Board may, at the Association's expense, appoint a monitor to oversee document review and protect the documents from alteration, destruction, or removal. The Agent shall make the Association's records available for any independent audit as may be required by the Master Deed and shall cooperate with the auditors who perform such audit. The cost of any such audit of the Association records shall be borne entirely by the Association.
2. The current year plus two (2) years of Association records will be kept and stored by the Agent. Records for prior years will be stored at the Condominium or the Agent will arrange for off-site storage at the Association's expense at the rate outlined in Article VII of this Agreement.
3. Supply samples and provide consultation to the Board for institution of necessary Rules and Regulations. Co-owners alleged to be in violation of

the Bylaws and/or Rules of the Condominium Association shall be processed in accordance with the Association Violation Policy.

4. Send out by mail or otherwise, general communications, financial statements, newsletters and flyers to all members of the Association at the direction of the Board. It is understood that the Agent may bill in accordance with Article VII for any supplies provided or clerical services performed for the Association or its Board, including duplication, printing, postage and the preparation and/or handling of newsletters.
5. Prepare and mail meeting notices and supporting information, such as financial statements and proposed budget, to the Co-owners for the Annual Meeting, supervise the voting and/or conduct the election at the Board's direction. Agent shall also prepare and mail notice of a Special Meeting for the purpose of Amending the Association's governing documents. Prior to submission of any such proposed amendment to a vote by the Association membership, the Association's designated legal counsel shall review any proposed Bylaw amendment.
6. Attend meetings. One of Agent's employees shall be designated Community Association Manager for the Condominium. The Community Association Manager or other representative of the Agent shall attend periodic meetings of the Board and the Annual Meeting of the Co-owners. Regular Board Meetings shall be held on normal business days. Any regular Board Meeting finishing after 9:00 PM shall be subject to an additional charge as specified in Article VII. Extra charges will not apply to the Annual Meetings, but will apply to Special or Emergency Meetings. The Community Association Management staff shall not be required to record the Minutes of any meeting.

#### D. ADDITIONAL SERVICES

1. Notwithstanding any other provision in this Agreement, the Agent's duties and monthly compensation hereunder do NOT include any of the following:
  - a. Supervision, investigation or oversight of insurance claims or adjustment of claims.
  - b. Preparation or research concerning any dispute, whether a part of litigation or not, and/or litigation involving the Association, whether it be plaintiff or defendant, including but not limited to answering interrogatories, appearing at depositions, appearing at arbitration or court proceedings or any other work incidental thereto.
  - c. Supervision of new construction, reconstruction, or replacement of existing structures and components.
  - d. Property inspections or evaluations
  - e. Investigation of complaints or potential violations

2. Agent may charge the Association for time spent regarding activities of the Agent in lawsuits in which the Association is plaintiff or defendant, including court appearance time, depositions and witness testimony, as well as the preparation, collation and/or dissemination of records, and compiling of information by request from the Board of Directors, its attorney, or others involved in the claims and/or lawsuits except where the Association and Agent are adverse parties. Time spent will be invoiced at the rates indicated in Article VII of this Agreement.
3. In the event that the Association desires the Agent to provide any of the above services, it is hereby agreed that the Agent shall fully cooperate to the extent reasonable under the circumstances, provided however, that the Agent shall be entitled to reimbursement of all costs incurred and compensation at the rates disclosed in Article VII. The Agent shall advise Board of Directors if the requested work, research, etc, falls into the categories outlined above and shall be billed at the stated rates.

#### **V. INDEMNIFICATION AND LIABILITY OF AGENT**

The parties acknowledge that decisions regarding the management of the Association are the responsibility of the Board of Directors and the Agent implements those decisions. Therefore, the Association hereby agrees to indemnify, defend and save harmless Agent, it's officers, agents and employees from all losses, expenses or damages of any nature whatsoever in connection with the management of the Association and from liability for injury to any person or property on, about or in connection with the Condominium from any cause whatever, unless such costs, expenses, damages or liabilities are caused by the Agent's own gross negligence, willful misconduct or material breach of this Agreement. The Agent shall not be liable to the Association or to any other person for any error in judgment or for doing or omitting to do any matter or thing pursuant to this Agreement except in cases of gross negligence, willful misconduct or material breach. The provisions of indemnity, defense and save harmless shall survive the termination of this Agreement and shall continue in full force and effect subsequent to termination. The Association agrees to add Agent as an Additional Insured on all liability insurance policies.

#### **VI. RELATIONSHIP OF AGENT TO OTHER ENTITIES**

If the Agent is connected with an entity that performs or delivers goods or services to the Association, the Agent agrees to disclose such relationship to the Board prior to entering into a contract with such entity or prior to delivery of goods or services. Any discount or other economic benefit received by the Agent as a result of any entity doing business with the Association shall be disclosed by the Agent and shall be passed on to the Association. If the Agent is connected with or related to a member of the Board of the Association, the Agent agrees to disclose such connection or relationship.

#### **VII. DISCLOSURE OF CHARGES**

Charges for additional services are outlined in the attached EXHIBIT A, entitled "Schedule of Charges."

**VIII. AGREEMENT TERM**

This Agreement shall take effect on January 1, 2017 and shall remain in full force and effect through December 31, 2017. Thereafter, the Agreement may be automatically renewed or extended for an additional one (1) year term on conditions as may be modified by mutual agreement of both parties. Termination of the Agreement during the initial term or any renewal term shall be accomplished as provided in Article IX.

**IX. TERMINATION**

This Agreement shall not be terminated by the Association until after the initial term. This Agreement can be terminated and (except as to liabilities or claims, which shall have occurred or arisen prior to such termination) all obligations hereunder shall cease upon the happening of any of the following:

1. Upon either of the contracting parties making the decision to terminate this Agreement, with or without cause, after the Agreement Term expiration, and upon sixty (60) day written notice sent by certified mail. All notices must be given before the beginning of a billing cycle and the agreement shall terminate sixty (60) days thereafter. Agent’s compensation shall continue until the end of the sixty (60) day period.
2. If a dispute arises between the Association and the Agent, and if in the opinion of the aggrieved party the offending party has committed a material breach of this Agreement, the aggrieved party must serve written notice upon the offending party setting forth the details of such alleged breach. If the offending party does not cure such breach within thirty (30) days after receipt of such notice, this Agreement may then be terminated for cause. Upon a party making the decision to terminate, it shall give the other party written notice of such determination and this contract shall then terminate sixty (60) days after receipt of such notice. Agent’s compensation shall continue until the end of the sixty (60) day period.
3. If a petition of bankruptcy is filed by either party, or if either shall make an assignment for the benefit of creditors, or if either party avails itself of any insolvency laws, either party may terminate this Agreement forthwith by serving written notice to the other via certified mail.

**X. FINAL ACCOUNTING**

Upon termination, the contracting parties shall account to each other with respect to all matters outstanding as to the date of termination and the Association shall furnish the Agent security satisfactory to Agent, against any outstanding obligations or liabilities that the Agent may have incurred hereunder.

**XI. EFFECT OF AGREEMENT**

This Agreement shall constitute the entire Agreement between the contracting parties and no variance or modifications thereof shall be valid and enforceable, except by supplemental agreement in writing, executed and approved in the same manner as this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the Association and the Agent and their respective successors and assigns. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together constitutes one and the same instrument.



**XII. ASSIGNMENT**

This Agreement may not be assigned by either party without the express written consent of the other.

**XIII. ACCEPTANCE**

In WITNESS WHEREOF, the parties have hereto executed this Agreement on the date and year first above written.

**DECORA PARK ASSOCIATION**

\_\_\_\_\_
Witness

\_\_\_\_\_
By:
Its: President

\_\_\_\_\_
Witness

\_\_\_\_\_
By:
Its: Secretary

\_\_\_\_\_
Witness

\_\_\_\_\_
By:
Its: Treasurer

**MICHIGAN CONDOMINIUM MANAGEMENT**

\_\_\_\_\_
Witness

\_\_\_\_\_
By: Jill A. Cubba
Its: President

\_\_\_\_\_
Witness

\_\_\_\_\_
By: Denise LaPointe
Its: Vice President