

**HOUSING AUTHORITY GENERAL MANAGER AGREEMENT**

**DATED:** \_\_\_\_\_, 2019

**PARTIES:** Claxter Crossing Apartments LLC (“Company”)

**AND:** North River Partners LLC (“Manager”)

**AND:** Housing Authority of the City of Salem (“General Manager”)

**Recitals**

A. The Company is an Oregon limited liability company which has been formed for the purpose of acquiring a parcel of real property located at 4265 and 4285 Claxter Court NE, Salem, Oregon (with the following property ID, map and tax lot numbers: R26022/073W12A 01600, R26025/073W12A 01603, and R26001/073W12AC00900) upon which the Company intends to construct a 102-unit apartment project with 101 residential units and one manager’s unit to be known as Claxter Crossing Apartments (the “Project”). North River Partners LLC will be the manager of the Company (the “Manager”).

B. For a period commencing once the Project is completed and ready for legal occupancy (herein called the “Effective Date”) and continuing for a period of ten (10) years, and thereafter so long as this Agreement is in full force and effect, a total of not less than (i) 101 apartment units shall be rented at rents affordable to persons or families at or below sixty (60) percent of area median income adjusted for family size as determined annually by the U.S. Department of Housing and Urban Development (HUD) (collectively, the “Affordable Units”).

C. The Company desires that the General Manager act as the General Manager of the Company and the General Manager has agreed to act as the General Manager of the Company, in accordance with the terms of this Agreement, the provisions of ORS 307.092, and any regulations adopted thereunder.

**Agreement**

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. The Recitals are incorporated into this Agreement as if fully set for the herein.

2. Appointment and Term.

(a) The Company hereby retains the General Manager to render services as the General Manager of the Company as herein contemplated. The initial term of this Agreement shall begin on the date of this Agreement, shall continue for a period that shall end on the earlier of (i) the 10th anniversary of the date on which the Project is placed into service and legally available for occupancy, or (ii) the date as of which the property exemption accorded by ORS 307.092, or any successor statute, is no longer in force or effect. Thereafter, this Agreement shall be automatically renewed for successive one-year terms unless either party gives notice to the other not less than 120 days before the end of the initial term or any annual renewal term of its desire to terminate this Agreement.

(b) In the event the Company ceases to be the owner of the Project, this Agreement shall terminate unless the Company notifies the General Manager of its intent to sell the Project at least ninety (90) days before such sale and the party to whom it intends to sell the Project and the General Manager in its reasonable discretion approves of the prospective purchaser. A condition to such approval shall be the undertaking of the prospective purchaser to maintain the affordability of the Affordable Units for the entire initial ten (10) year period of this Agreement. The prospective purchaser shall also agree to be a party to this Agreement with the General Manager and abide by all of its terms and conditions of this Agreement for the initial ten (10) year period.

3. Duties. The General Manager shall:

(a) as requested by the Manager, review information with respect to tenants in the Project to ensure that the Project is operated as a project for persons of lower income in accordance with the provisions of ORS 307.092.

(b) as the General Manager may elect, review, on an annual basis, inspections, certifications, audits, and/or reports prepared or received by the Company pertaining to the Project's condition, operations, and/or regulatory compliance;

(c) provide, upon request of the Manager, consultation for the benefit of the Manager regarding the performance by the Manager of duties of the Manager under the Company Agreement;

(d) provide, upon request of the Manager, advice for the benefit of the Manager regarding how the Manager might improve the efficiency with which the Manager performs its duties under the Operating Agreement of the Company;

(e) provide, upon request of the Manager, advice for the benefit of the Manager regarding the performance and/or selection of accountants providing professional partnership accounting services.

4. Duties of the Manager

(a) So long as this Agreement is in effect, rent the Affordable Units at or below the rent levels set out in Recital B;

(b) As requested by the General Manager, provide copies of monthly rent rolls and other documentation required to show compliance with this agreement's affordability provisions and to show the project is operated as a project for persons of lower income in accordance with the provisions of ORS 307.092; and

(c) Provide a copy of the annual Company audit for this property each year when completed to the General Manager.

5. Limitation on Obligations. The Company and Manager hereby agree that the General Manager shall have no fiduciary duty to either of them under this Agreement. Upon the formation of the Company, the Company will become a party to this Agreement and shall make the same undertaking.

6. Compensation. During the term of this Agreement, the Company shall pay the General Manager a fee of Five Thousand Dollars (**\$5,000**) per year for services rendered by or available from the General Manager during the prior year with such payments commencing on the first anniversary date of the Effective Date, and continuing each anniversary date thereafter, for a minimum period of ten (10) years.

7. Indemnification. The Company shall indemnify, defend, and hold harmless the General Manager from and against any loss, liability, damage, cost, or expense (including reasonable attorneys' fees) arising out of or alleged to arise out of any demands, claims, suits, actions, or proceedings against the General Manager, by reason of any act or omission performed by it (including its employees and agents) while acting in good faith on behalf of the Company and within the scope of the authority of the General Manager pursuant to this Agreement, and any amount expended in any settlement of any such claim of liability, loss, or damage. This indemnity shall be operative only in the context of third-party suits, and not in connection with demands, claims, suits, actions or proceedings initiated by the Member or Manager or any Affiliate thereof against the other party. Prior to the formation of the Company, Manager shall undertake the indemnification set forth in this Section 7 for the period from the date hereof until the Company becomes a party to this Agreement.

8. Default. If either party fails to perform its duties and obligations under this Agreement (an "Event of Default"), the other party shall be entitled for the ten-year term of this Agreement, as the same may be extended, to specifically enforce the duties and obligations of the other party under this Agreement in addition to any other remedies that may be available at law or in equity to enforce this Agreement. If an Event of Default should occur and be continuing, the non-defaulting party shall give the defaulting party notice and an opportunity to cure within 30 days after receipt of the notice, unless the default is curable, but not capable of being cured within such 30-day period, in which event the defaulting party shall have 90 days to effect a cure.

9. Mediation. Any dispute or controversy arising in connection with this Agreement must be first subject to non-binding mediation. The mediator may be agreed upon by all parties to the dispute, or if agreement is not possible or 30 days have elapsed, whichever shall occur sooner, chosen by the Arbitration Service of Portland or its successor or equivalent organization. The cost of the mediator shall be shared equally by all participating parties. The mediation must

be complete within 30 days of the selection of the mediator. Completion of the process, or the elapse of 30 days from the selection of the mediator, shall be condition precedent to entering into arbitration.

10. Arbitration. Subject to Section 9, any unresolved dispute must be settled by arbitration administered by the Arbitration Service of Portland in accordance with its Commercial Arbitration Rules subject to the following:

(a) Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, and the resolution of the disputed matter as determined by the arbitrator will be binding on the parties. Any such arbitration must be conducted in Salem, Oregon.

(b) Any party may, without inconsistency with this Agreement, seek from a court any interim or provisional relief that may be necessary to protect the rights or property of that party pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy).

(c) Arbitration proceedings under this Agreement may be consolidated with arbitration proceedings pending between other parties if the arbitration proceedings arise out of the same transaction or relate to the same subject matter. Consolidation will be by order of the arbitrator, in any of the pending cases, or if the arbitrator fails to make such an order, the parties may apply to any court of competent jurisdiction for such an order.

(d) The arbitrator will have the discretion to order a pre-hearing exchange of information by the parties including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties.

(e) Except as otherwise provided herein, the arbitrator will have the authority to award any remedy or relief that an Oregon court could order or grant, including, without limitation, specific performance of any obligation created under this Agreement, the awarding of punitive damages, the issuance of an injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.

(f) The arbitration may award costs and fees to the prevailing party if, in the arbitrator's discretion, the non-prevailing party did not prosecute the arbitration or settlement of the dispute in good faith. "Costs and fees" for this purpose means reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees. Except as otherwise awarded by the arbitrator, all costs and fees will be borne by the party incurring such costs and fees.

(g) The award must be in writing and must be signed by the arbitrator and must include a statement regarding the disposition of any statutory claim. Except to the extent required by law, no party, nor the arbitrator, may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of the other party.

11. Disclaimer of Company. The Company and the Manager, on the one hand, and the General Manager, on the other hand, disclaim any relationship other than as defined in this Agreement. No partnership, joint venture, or other similar interest is intended or created by this Agreement.

12. Amendment. The parties hereto may amend this Agreement at any time only by written amendment executed by all of the parties to this Agreement.

13. Burden and Benefit. The covenants and agreements contained herein shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. Neither party may assign this Agreement without the consent of the other parties.

14. Severability of Provisions. Each provision of this Agreement shall be considered severable, and if for any reason any provision that is not essential to the effectuation of the basic purposes of the Agreement is determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those provisions of this Agreement that are valid.

15. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

16. Binding Agreement. This Agreement shall be binding on the parties hereto, and their heirs, executors, personal representatives, successors and assigns.

17. Headings. All section headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any section.

18. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine and neuter gender, shall include all other genders, the singular shall include the plural, and *vice versa* as the context may require.

In Witness Whereof, the parties have executed this Housing Authority General Manager Agreement as of the date first written above.

COMPANY

MANAGER

CLAXTER CROSSING APARTMENTS,  
LLC

NORTH RIVER PARTNERS LLC

By: North River Partners LLC, Manager

By: \_\_\_\_\_

Timothy M. Moneke,  
Authorized Member

\_\_\_\_\_  
Timothy M. Moneke,  
Authorized Member

GENERAL MANAGER

HOUSING AUTHORITY OF THE CITY OF  
SALEM

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_