

# UNOFFICIAL COPY

THIS INSTRUMENT PREPARED BY  
AND WHEN RECORDED, RETURN  
TO:

Kevin A. Sullivan, Esq.  
Winstead Sechrest & Minick P.C.  
5400 Renaissance Tower  
1201 Elm Street  
Dallas, Texas 75270

99797328

7189/0185 92 001 Page 1 of 15  
1999-08-20 10:59:30  
Cook County Recorder 49.00

Loan No. 240653

## CONSENT AND AGREEMENT

The undersigned (the "Undersigned") acknowledges an assignment of certain documents pursuant to that certain Mortgage, Security Agreement and Fixture Financing Statement (the "Security Instrument") to be executed and delivered by PENSACOLA ASSOCIATES L.L.C., an Illinois limited liability company ("Borrower"), to COLUMN FINANCIAL, INC., a Delaware corporation ("Lender"), in connection with that certain loan (the "Loan") of FIFTEEN MILLION THREE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$15,350,000.00) being made by Lender to Borrower to finance certain real property and improvements located in Cook County, Illinois and more particularly described on Exhibit A attached hereto and incorporated herein by reference, said real property and improvements being hereinafter referred to as the "Premises." The Undersigned has agreed to perform or supply certain services in connection with the management of the Premises pursuant to that certain Management Agreement dated as of March 1, 1995 (the "Contract") attached hereto as Exhibit B and incorporated herein by reference for all purposes. The Undersigned does hereby (a) warrant and represent that the Contract contains all agreements between the Undersigned and Borrower relating to the Premises; and (b) acknowledge and consent to the assignment of the Contract as set forth in the Security Instrument and to any further assignment thereof by Lender; and (c) warrant and represent that no default exists under the terms of the Contract between Borrower and the Undersigned; (d) acknowledge that Borrower has satisfied all conditions precedent to commencement of performance by the Undersigned under the Contract and (e) acknowledge that the tenant estoppel certificates addressed to the Undersigned from tenants at the Premises were received by the Undersigned as agent on behalf of Borrower and for the benefit of Borrower. The Undersigned does hereby agree that: (i) in the event of any default by Borrower under the terms of the "Loan Documents" (as defined in the Security Instrument), the Undersigned shall, upon receipt of written notice and demand of Lender, continue performance under the Contract on behalf of Lender, provided that the Undersigned is reimbursed for such performance rendered thereafter on behalf of Lender in accordance with the Contract; and (ii) in the event of any default by Borrower under the Contract, the Undersigned shall deliver to Lender, by certified United States

**BOX 333-CTI**

RF2 #7820957

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Property of

15  
[Signature]

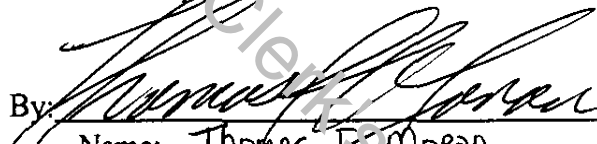
mail, postage prepaid, return receipt requested, addressed to COLUMN FINANCIAL, INC., c/o 3414 Peachtree Road, Suite 1140, Atlanta, Georgia 30326-1113, written notice of such default and the action required to cure the same, and Lender shall have a reasonable time (but in no event less than thirty days after receipt of such notice) within which Lender shall have the right, but not the obligation, to cure such default, and the delivery of such notice of default and the failure of Lender to cure the same within such time allowed shall be conditions precedent to the exercise of any right or remedy of the Undersigned arising by reason of such default; and (iii) the Undersigned shall not enter into any modification of, or addition to, the Contract without the prior written consent of Lender; and (iv) in the event that Lender shall acquire title to the Premises by foreclosure or otherwise, the Contract shall be terminable at the option of Lender; and (v) the rights of the Undersigned under the Contract shall be and remain subordinate in all respects to the Loan Documents.

The Undersigned represents that it is looking to Borrower, and not to Lender, for payment under the Contract, except as provided in clause (i) of the preceding paragraph and the Undersigned waives any equitable lien which the Undersigned may now or hereafter have upon the proceeds of the Loan.

This Consent and Agreement is given by the Undersigned for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Undersigned, and is intended to induce Lender to make the Loan to Borrower.

IN WITNESS WHEREOF, the Undersigned has executed this instrument to be effective as of August 13, 1999.

**RMK MANAGEMENT CORP.,**  
an Illinois corporation

By:   
Name: THOMAS T. MORAN  
Title: VICE PRESIDENT

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99797328

STATE OF ILLINOIS )  
 )  
COUNTY OF Cook ) SS.

I, Jeffrey C. Rappin, a Notary Public in and for the County and State aforesaid, DO HEREBY CERTIFY THAT Thomas A. Moran, personally known to me to be the Vice President of Gmk Management Corp., an Illinois corporation, appeared before me this day in person and acknowledged that he signed and delivered said instrument as his own free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this 13<sup>th</sup> day of August, 1999.

Jeffrey C. Rappin  
Notary Public

My Commission Expires:  
\_\_\_\_\_



### EXHIBIT LIST

- Exhibit A - Legal Description
- Exhibit B - Management Agreement

::ODMA\PCDOCS\DALLAS\_131708134  
171:3011-450

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## EXHIBIT A

### LEGAL DESCRIPTION

99797328

Street Address: 4334 N. Hazel, Chicago, Cook County, Illinois

Permanent Tax Numbers:

14-17-405-003-0000  
14-17-405-006-0000  
14-17-405-007-0000  
14-17-405-008-0000  
14-17-405-011-0000  
14-17-406-001-0000  
14-17-406-002-0000  
14-17-406-003-0000  
14-17-406-004-0000  
14-17-406-011-0000  
14-17-406-012-0000

#### PARCEL 1:

THAT PART OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, CONSISTING OF VARIOUS AND SUNDRY LOTS AND BLOCKS TOGETHER WITH ALL OF VACATED PENSACOLA AVENUE FALLING WITHIN A TRACT OF LAND BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF NORTH HAZEL STREET WITH THE SOUTH LINE OF WEST MONTROSE AVENUE BEING ALSO THE NORTHEAST CORNER OF LOT 1 IN SIMONDS AND STEARN'S MONTROSE BOULEVARD AND FREEMONT STREET SUBDIVISION IN SECTION 17, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED FEBRUARY 3, 1900 AS DOCUMENT NO. 2922612; THENCE DUE WEST (BEING AN ASSUMED BEARING FOR THIS LEGAL DESCRIPTION) ALONG SAID SOUTH LINE OF WEST MONTROSE AVENUE 584.85 FEET TO THE EAST LINE OF SHERIDAN ROAD (FORMERLY SHEFFIELD AVENUE) AS WIDENED; THENCE SOUTH 00 DEGREES 10 MINUTES 45 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 218.81 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF NORTH BROADWAY; THENCE SOUTH 24 DEGREES 30 MINUTES 25 SECONDS EAST ALONG SAID LAST DESCRIBED LINE AND SAID LINE EXTENDED, 206.89 FEET TO AN INTERSECTION WITH A LINE 62.50 FEET NORTHWESTERLY OF AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BLOCK 1, AS MEASURED ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 1, IN POST AND SIMON'S PARTITION IN SECTION 17, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 23, 1876 AS DOCUMENT NO. 115561; THENCE NORTH 65 DEGREES 29 MINUTES 35 SECONDS EAST ALONG SAID LAST DESCRIBED

PARALLEL LINE, 209.63 FEET TO A POINT ON SAID PARALLEL LINE 64.50 FEET SOUTHWESTERLY OF THE INTERSECTION OF SAID PARALLEL LINE WITH THE EAST LINE OF BLOCK 1 IN POST AND SIMON'S PARTITION, AFORESAID, (SAID INTERSECTION BEING HEREINAFTER REFERRED TO AS "POINT A"); THENCE NORTH 89 DEGREES 49 MINUTES 15 SECONDS EAST 58.81 FEET TO A POINT ON THE EAST LINE OF BLOCK 1 IN POST AND SIMON'S PARTITION, AFORESAID, SAID POINT BEING 26.57 FEET SOUTH OF "POINT A"; THENCE SOUTH 00 DEGREES 13 MINUTES 00 SECONDS EAST 31.02 FEET TO AN INTERSECTION WITH A LINE 10.0 FEET (AS MEASURED AT RIGHT ANGLES) NORTHWESTERLY OF AND PARALLEL WITH THE SOUTHEASTERLY LINE OF LOTS 6 AND 7 IN O.C. SIMON'S SUBDIVISION IN SECTION 17, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED APRIL 26, 1886 AS DOCUMENT NO. 709031, (THE SOUTHEASTERLY LINE OF SAID LOTS 6 AND 7 BEING IDENTICAL WITH PART OF THE NORTHWESTERLY LINE OF LOTS 7, 8 AND 9 IN BUENA PARK SUBDIVISION IN SECTION 17, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED OCTOBER 1, 1890 AS DOCUMENT NO. 1345801); THENCE NORTH 65 DEGREES 29 MINUTES 35 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 74.56 FEET TO AN INTERSECTION WITH A NORTHWESTERLY EXTENSION OF THE SOUTHWESTERLY LINE OF LOT 9 IN BUENA PARK SUBDIVISION, AFORESAID; THENCE SOUTH 24 DEGREES 30 MINUTES 25 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 109.79 FEET TO THE NORTHWESTERLY LINE OF WEST CULLOM AVENUE; THENCE NORTH 65 DEGREES 25 MINUTES 15 SECONDS EAST, 150.76 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH HAZEL STREET; THENCE NORTH 00 DEGREES 13 MINUTES 00 SECONDS WEST ALONG SAID WEST LINE OF NORTH HAZEL STREET, 357.41 FEET TO THE PLACE OF BEGINNING; EXCEPTING FROM THE AFOREDESCRIBED TRACT OF LAND, ALL THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE DUE WEST ALONG THE NORTH LINE OF SAID TRACT, 68.0 FEET; THENCE DUE SOUTH 20.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE DUE SOUTH 42.0 FEET; THENCE DUE WEST 180.0 FEET; THENCE DUE NORTH 42.0 FEET; THENCE DUE EAST 180.0 FEET TO THE PLACE OF BEGINNING, LYING ABOVE A CITY OF CHICAGO DATUM PLANE OF 44.08 FEET; ALSO EXCEPTING FROM THE AFOREDESCRIBED TRACT OF LAND, ALL THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE DUE WEST ALONG THE NORTH LINE OF SAID TRACT 266.0 FEET; THENCE DUE SOUTH 20.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE DUE SOUTH 262.0 FEET; THENCE DUE WEST 42.0 FEET; THENCE DUE NORTH 262.0 FEET; THENCE DUE EAST 42.0 FEET TO THE PLACE OF BEGINNING, LYING ABOVE A CITY OF CHICAGO DATUM PLANE OF 44.08 FEET; ALSO EXCEPTING FROM THE AFOREDESCRIBED TRACT OF LAND, ALL THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE DUE WEST ALONG THE NORTH LINE OF SAID TRACT 68.0 FEET; THENCE DUE SOUTH 240.0 FEET TO A PLACE OF BEGINNING; THENCE DUE SOUTH 42.0 FEET; THENCE DUE WEST 180.0 FEET; THENCE DUE NORTH 42.0 FEET; THENCE DUE EAST 180.0 FEET TO THE PLACE OF BEGINNING,

LYING ABOVE A CITY OF CHICAGO DATUM PLANE OF 44.08 FEET; ALSO EXCEPTING FROM THE AFOREDESCRIBED TRACT OF LAND, ALL THAT PART THEREOF BOUNDED AND DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID TRACT; THENCE SOUTH 00 DEGREES 13 MINUTES 00 SECONDS EAST ALONG THE WEST LINE OF NORTH HAZEL STREET, 346.0 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE DUE WEST PARALLEL WITH THE SOUTH LINE OF WEST MONTROSE AVENUE 170.30 FEET TO AN INTERSECTION WITH THE SOUTHWESTERLY LINE OF LOT 9 IN BUENA PARK SUBDIVISION, AFORESAID; THENCE SOUTH 24 DEGREES 30 MINUTES 25 SECONDS EAST ALONG SAID LAST DESCRIBED LINE, 81.23 FEET TO THE NORTHWESTERLY LINE OF WEST CULLOM AVENUE; THENCE NORTH 65 DEGREES 25 MINUTES 15 SECONDS EAST, 150.26 FEET TO AN INTERSECTION WITH THE WEST LINE OF NORTH HAZEL STREET; THENCE NORTH 00 DEGREES 15 MINUTES 00 SECONDS WEST ALONG SAID WEST LINE OF NORTH HAZEL STREET, 11.41 FEET TO THE PLACE OF BEGINNING, ALL IN COOK COUNTY, ILLINOIS.

**PARCEL 2:**

EASEMENT FOR THE BENEFIT OF PARCEL 1 FOR INGRESS AND EGRESS AND DRIVEWAY CREATED BY AGREEMENT FOR EASEMENTS AND OTHER RIGHT MADE BY AND BETWEEN THE SALVATION ARMY, AN ILLINOIS CORPORATION AND AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JANUARY 1, 1974 AND KNOWN AS TRUST NO. 32587, SAID AGREEMENT DATED SEPTEMBER 20, 1979 AND RECORDED NOVEMBER 8, 1979 AS DOCUMENT NO. 25232400, ON, OVER AND ACROSS THE LAND DESCRIBED AS FOLLOWS: THAT PART OF BLOCK 1 IN POST AND SIMON'S PARTITION OF LOT 17 AND THE NORTHWESTERLY 1.735 CHAINS OF LOT 16 IN HUNDLEY'S SUBDIVISION OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 40 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN AND OF LOT 1 IN IGLEHART'S SUBDIVISION OF THE WEST 1/2 OF SAID SOUTHEAST 1/4 OF SECTION 17, AFORESAID, ACCORDING TO THE PLAT THEREOF RECORDED DECEMBER 23, 1876 AS DOCUMENT NO. 115561, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE NORTHEASTERLY LINE OF NORTH BROADWAY, BEING A LINE 33.0 FEET, AS MEASURED AT RIGHT ANGLES NORTHEASTERLY OF AND PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID BLOCK 1 WITH A LINE 62.50 FEET NORTHWESTERLY OF AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BLOCK 1, AS MEASURED ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 1; THENCE NORTH 65 DEGREES 29 MINUTES 35 SECONDS EAST ALONG SAID LAST DESCRIBED PARALLEL LINE, 209.63 FEET TO A POINT ON SAID PARALLEL LINE 64.50 FEET SOUTHWESTERLY OF THE INTERSECTION OF SAID PARALLEL LINE WITH THE EAST LINE OF BLOCK 1 IN POST AND SIMON'S PARTITION, AFORESAID (SAID INTERSECTION BEING HEREINAFTER REFERRED TO AS "POINT A"); THENCE NORTH 89 DEGREES 49 MINUTES 15 SECONDS EAST, 29.13 FEET TO AN INTERSECTION WITH A LINE 50.50 FEET NORTHWESTERLY OF AND PARALLEL WITH THE SOUTHEASTERLY LINE OF BLOCK 1, AS MEASURED



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ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK 1 (AN EASTERLY EXTENSION OF SAID LINE BEARING NORTH 89 DEGREES 49 MINUTES 15 SECONDS EAST INTERSECTS THE EAST LINE OF SAID BLOCK 1 AT A POINT 26.57 FEET SOUTH OF "POINT A" AFOREMENTIONED); THENCE SOUTH 65 DEGREES 29 MINUTES 35 SECONDS WEST ALONG SAID LAST DESCRIBED PARALLEL LINE 236.17 FEET TO THE NORTHEASTERLY LINE OF BROADWAY; THENCE NORTH 24 DEGREES 30 MINUTES 25 SECONDS WEST ALONG SAID LAST DESCRIBED LINE 12.0 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

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460.3011-450

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EXHIBIT B

Management Agreement

Property of Cook County Clerk's Office

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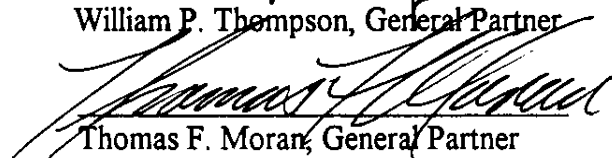
**ASSIGNMENT OF MANAGEMENT AGREEMENT**

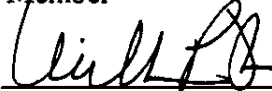
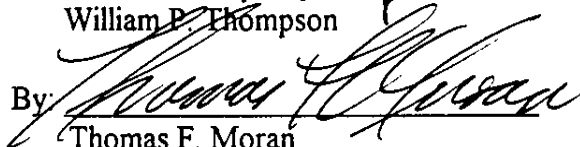
This Agreement made and entered into as of the 15<sup>th</sup> day of August, 1999, by and between Pensacola Associates, an Illinois limited partnership ("Owner") and Pensacola Associates L.L.C., an Illinois limited liability company ("Assignee").

- A. Owner is currently the owner of that certain residential and commercial property commonly known as Pensacola Place (the "Property") located at 4334 N. Hazel Street, Chicago, Illinois.
- B. Owner is concurrently transferring all of its right, title and interest in and to the Property to Assignee.
- C. Owner had previously entered into a Management Agreement (the "Agreement") as of March 1, 1995 with RMK Management Company, as Manager, for the provision of management services with respect to the Property.
- D. Owner desires to assign to Assignee all of its right, title and interest into and under the Agreement and Assignee desires to accept said Assignment.

NOW, THEREFORE, the parties agree as follows:

- 1. Owner hereby assigns, transfers and sets over to Assignee all of its right, title and obligations into and under the Agreement said Assignment to be effective as of the date hereof.
- 2. Assignee accepts the foregoing Assignment and shall be entitled to the benefits and obligations of the Owner under the Agreement effective as of the date hereof.

Pensacola Associates  
By:   
William P. Thompson, General Partner  
  
Thomas F. Moran, General Partner

Pensacola Associates, L.L.C.  
By: Pensacola Associates, its sole  
Member  
By:   
William P. Thompson  
By:   
Thomas F. Moran

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## MANAGEMENT AGREEMENT

THIS AGREEMENT, made and entered into as of the 1st day of March, 1995, by and between PENSACOLA ASSOCIATES, an Illinois limited partnership ("Owner" herein) and RMK MANAGEMENT COMPANY, an Illinois Corporation ("Manager" herein), is made with reference to the following facts:

A. Owner is the owner of certain apartment units and commercial space known as Pensacola Place (the "Property" herein) located at 4334 North Hazel Street, in the City of Chicago, County of Cook, State of Illinois.

B. Owner desires to retain the services of Manager to manage the Property as a rental property on Owner's behalf, and Manager has agreed to so manage the Property.

NOW THEREFORE, in consideration of the foregoing recitals and the mutual agreements hereinafter set forth, the parties hereto agree as follows:

1. Engagement of Manager. Owner hereby engages Manager, and Manager accepts such engagement, to manage and operate the Property upon the terms and conditions hereinafter set forth.

2. Term. The term of this Agreement shall commence as of the date hereof and shall continue for successive one (1) year periods unless terminated sooner in accordance with the provisions hereinafter set forth. Owner may terminate this Agreement without cause as of the end of any such one (1) year period upon not less than ninety (90) days notice of Manager.

3. Duties and Authority of Manager. Manager's duties and authority shall consist of the following:

(a) Possession and Control. To take sole, entire and exclusive possession and control of the Property.

(b) Letting. To use all reasonable efforts to let the apartment units comprising the Property to desirable tenants and, in connection therewith, to place newspaper advertisements, display "For Rent" signs, prepare circulars and engage in other forms of advertising. Manager may also negotiate, sign, renew, modify and cancel rental agreements and leases with tenants of the Property for such rental agreements and leases with tenants of the property for such rentals and on such terms as Manager deems appropriate.

(c) Collection of Income. To bill tenants for rent in the name of Manager, use its best efforts to collect the rents and all other income derived from

the operation and management of the Property promptly when such amounts become due, give receipts therefore and endorse Owner's name on any rent checks made payable to Owner and deposit the same and all such amounts in an account opened in the name of Manager with Continental Bank and Bank of Chicago or any other banking institution approved by Owner, and with authorized officers of Manager as sole signatories thereon with exclusive authority to draw on such account during the term hereof. Manager shall deposit all collected rents and other revenues of the Property, together with rents and revenues of other property managed by Manager, into such account and shall make all payments authorized hereunder from such account. If the balance of rents and other revenues of the Property in such account at any time during the term hereof exceeds sufficient operating reserves as terminated by Manager, Manager shall pay such excess to Owner.

(d) Maintenance and Operation. To oversee the day-to-day management of the Property, use its best skill and efforts to serve tenants of the Property and purchase necessary furniture, fixtures, equipment, tools, appliances, materials, electricity, gas, water, telephone, window cleaning, refuse disposal, pest control and any other utilities or services required for the operation of the Property and make or cause to be made and supervised, necessary repairs, alterations and decorations.

(e) Employees. To employ, discharge, supervise and pay on behalf of Owner all servants, employees, contractors and agents necessary or convenient for the efficient operation and maintenance of the Property. Manager shall not be liable to employee or contractor if Manager has taken reasonable care in his employment.

(f) Termination of Tenancies. In the name of Owner, to sign and serve such notices on delinquent tenants as Manager may deem necessary or proper, to engage counsel and, in Owner's name, to (i) sue for and recover any rents which are past due; (ii) attach, garnish and levy upon the property of any delinquent tenant and recover possession of any part of the Property therefrom; and (iii) settle, compromise and adjust any such actions, suits or proceedings and the matters involved therein.

(g) Payment of Expenses. To pay on behalf of Owner all normal charges and operating expenses of the Property including, without limitation, the management fees and other compensation payable to Manager hereinafter provided for. Owner shall also reimburse Manager for the salaries and wages of all servants and employees of Manager in connection with the operation or maintenance of the Property and all related costs, including social security benefits, unemployment insurance, medical and like insurance, workers' compensation and federal and state withholding taxes, and none of such amounts shall be paid by Manager from its compensation received under Paragraph 5.

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(h) Books of Account and Records. To keep full, detailed and adequate accounts and records of all receipts, expenses and disbursements relating to the Property, and, upon five (5) days written notice, to permit Owner and its representatives to examine the same at any time during Manager's regular business hours.

(i) Insurance. To keep in force during the term of this Agreement (i) liability coverage insuring RMK Management Corporation in the amount of \$500,000.00 per occurrence and (ii) workers' compensation coverage, together with any additional workers' compensation insurance required by law. The policies of such insurance shall be written through such agents or brokers and by such companies as may be designated by Manager.

(j) Monthly Reports. To prepare and submit the following reports to Owner:

(i) A detailed statement of all receipts, expenses and disbursements relating to the Property for the preceding month, or portion thereof, to be delivered to Owner within twenty (20) days after the end of each month during the term of this Agreement.

(ii) By at Least November 15th of each year, an annual operating plan and budget for the ensuing year for review and approval by Owner, which plan and budget shall set forth the proposed or contemplated operations for the following calendar year. Such plan shall be submitted at such times, in such detail, and with such information as Owner shall reasonably require.

(k) Additional Duties. In addition to the foregoing, Manager shall perform all services which are necessary for, and shall use due diligence in the operation and management of, the Property, and shall report to Owner promptly any conditions at, on or about the Property which, in the opinion of Manager, require the attention of Owner.

4. Funding by Owner. On the first day of each calendar month during the term hereof Owner shall pay to Manager such amounts as may be necessary for Manager to pay all expenses of operation of the Property. Such payments shall be made directly to Manager or by depositing the same in the account referred to in subparagraph 3 (c) above and promptly notifying Manager of such deposit. If Owner fails to pay such amount, Manager shall apply the rents and other revenues of the Property in the following order: (i) to the payment of Manager's compensation under Paragraph 5, (ii) to the payment of charges and operating expenses of the property pursuant to subparagraph 3 (g) above, and (iii) to the payment of other expenses payable by Manager hereunder.

5. Compensation. As monthly compensation for the services to be rendered by manager pursuant to this Agreement, Owner shall pay to Manager a management fee as follows: (a) five percent (5%) of gross residential income collected; plus (b) three percent (3%) of gross commercial income collected plus (c) five percent (5%) of gross miscellaneous income collected. For purposes of this Agreement, the term "gross income" shall mean the entire amount of all receipts including, without limitation, rent and charges made for the rendition of services of any kind whatsoever. If the term of this Agreement commences or expires or if this Agreement is terminated during a calendar month, the gross income for such calendar month shall be prorated as of the date thereof.

6. Insurance. Owner shall take out and keep in force during the term of this Agreement, a standard apartment owner's insurance policy for each apartment unit comprising the Property containing liability coverage in the amount of \$1,000,000 per occurrence and naming Manager as an additional insured.

7. Use of Manager's own Funds. Notwithstanding any contrary provision herein, Manager shall not be obligated to use or advance any of its own fund or to incur any obligations on its own behalf with respect to any of the expenses or obligations in connection with the Property or its services hereunder. If, however, any such expenses are paid out of Manager's own funds, it shall be entitled to reimbursement from Owner therefore, together with interest thereon at the per annum rate which is three percent (3%) in excess of the prime rate announced from time to time by Continental Bank for corporate borrowers of the highest credit standing for short-term, unsecured loans, but not to exceed the maximum rate permitted by law, from the date of such payment to the date of such reimbursement, and may apply the next receipts derived from the operation of the Property to the payment thereof.

8. Exclusivity of Agency. During the term of this Agreement, Owner shall not authorize any other person, firm or corporation to act as manager or leasing agent with respect to the Property or to perform any of the other duties of manager hereunder and shall not permit any person, firm or corporation other than Manager to have or maintain any rental or "for rent" signs in or about the Property. Manager shall have the right to display on the Property suitable signs indicating that Manager is the exclusive managing agent of the Property.

9. Indemnification. Owner shall indemnify Manager and hold it harmless from and against any and all loss, damage, liability and expense, including costs and reasonable attorneys' fees, to which Manager may be put or which it may incur by reason of or in connection with any injury or damage or claim of injury or damage of any kind whatsoever to person or property



occasioned in or about the Property not arising from any willful misconduct or gross negligence of Manager.

10. Default. If either party hereto defaults in the performance of any of its obligations hereunder at any time during the term of this Agreement, the other party, in addition to any other rights or remedies it may have, shall have the right to terminate this Agreement by serving notice on the defaulting termination which shall not be less than ten (10) days after such service. If the default so specified is not cured by the defaulting party prior to the date so set for termination, this Agreement shall terminate on such date; provided, however, that if such default is incapable of being cured within such period, the same shall not be the basis for termination hereunder if the defaulting party commences to cure the same during such period and thereafter diligently prosecutes the cure to completion. Upon any such termination, Manager shall deliver possession of the Property to Owner or its nominee.

11. Notices. All notices and demands of any kind which either party hereto may be required or desires to serve upon the other party under the terms of this Agreement shall be in writing and shall be served upon such other party by personal service or registered mail, postage prepaid, with return receipt requested, addressed as follows:

If to Owner:                    Pensacola Associates  
    c/o Thomas F. Moran, General Partner  
    200 West Madison Street, Suite 2700  
    Chicago, Illinois 60606

If to Manager:                RMK Management Corporation  
    200 West Madison Street  
    Suite 2700  
    Chicago, IL 60606

In the case of service by mail, it shall be deemed complete on the day of actual delivery as shown by the addressee's registered or certified mail receipt or at the expiration of the third business day after the date of mailing, whichever first occurs. The addresses to which notices and demands shall be delivered or sent may be changed from time to time by notice served as hereinabove provided by either party upon the other party.

12. Attorney's Fees. If either party hereto without fault on the part of such party be made a party to any litigation instituted by or against the other party hereto, then such other party covenants and agrees to pay to the party who without fault has been made a party to such litigation all of such party's attorneys' fees incurred by such party in or in connection with such litigation.

13. Successors and Assigns. Manager may delegate any of its duties hereunder but no such delegation shall relieve Manager of any of its obligations hereunder. Except as provided in the preceding sentence, neither party may assign this Agreement or any interest herein without the prior written consent of the other party. Subject to the foregoing restrictions, this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties hereto.

14. Paragraph Headings. The headings of the several paragraphs and subparagraphs of this Agreement are inserted solely for convenience of reference, and are not a part of and any term or provision hereof.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois.

16. Power of Attorney. Owner hereby gives and grants to Manager a power of attorney to act on behalf of Owner in connection with the enforcement and/or termination of the leases and/or rental agreements. This power of attorney shall include name notices to quit and other similar notices regarding termination of tenancies and complaints and verifications thereof for unlawful detainer.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written

"Owner"

"Manager"

PENSACOLA ASSOCIATES  
an Illinois limited partnership

RMK MANAGEMENT CORPORATION  
an Illinois corporation

By:   
Its: General Partner

By:   
Its: President