

HOME OWNER'S ASSOCIATION MANAGEMENT AGREEMENT
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HOMEOWNERS' ASSOCIATION MANAGEMENT AGREEMENT
HERRINGTON PLACE HOMEOWNERS' ASSOCIATION, INC.

THIS AGREEMENT is made this _____ day of December, 2022, between HERRINGTON PLACE HOMEOWNERS' ASSOCIATION, INC. hereinafter known as the "Association", and R. N. Landis Management Co., hereinafter known as the "Agent".

WHEREAS, HERRINGTON PLACE HOMEOWNERS' ASSOCIATION, INC. Home Owners' Association is an Ohio corporation located in Reminderville, Ohio, and

WHEREAS, The Association, acting through its Board of Managers, hereinafter known as the Board, pursuant to its Declaration of Covenants, Codes, Restrictions, and By-Laws, desires to appoint R. N. Landis Management Co. as its Agent to manage the Association Property:

NOW THEREFORE, in consideration of the mutual promises of the parties herein after contained, and other consideration as stated, the parties hereby agree as follows:

1.0 APPOINTMENT

The Board, by the authority contained in the Declaration of Ownership, hereby appoints the Agent as exclusive agent of the Association, to operate and manage the common areas of the Association Property, subject to the direction and control of the Board, and the Agent hereby accepts the appointment on the terms and conditions herein provided.

2.0 TERM

The term of the Agreement shall begin on December 10, 2022 and continue until December 10, 2026 unless lawfully terminated before such time as provided in Item 9.0, et. seq., below and Agent shall continue on a month to month basis until such time as the parties agree to extend or terminate pursuant to the terms of this Agreement.

3.0 AGENT'S DUTIES – GENERAL

The agent shall manage, operate, and maintain the common areas of the Association as Agent of the Association under the direction of the Board and in accordance with instructions issued by said Board from time to time. Specifically, but not by way of limitation, the Agent's duties shall consist of the following:

3.01 Meetings. Agent will attend regularly scheduled Board meetings as well as one annual meeting of the Association. Agent will assist in preparing agendas for meetings when requested. When directed, Agent will send formal notification of such meeting at the expense of the Association.

Meetings lasting more than two hours (2 hours) will be charged at a per hour rate. (Refer to rate schedule 13.0, item 1 of this agreement.)

When scheduling permits, Agent will attend additional Board or Association meetings, and shall receive additional compensation by the Association. (Refer to rate schedule 13.0, item 2 of this agreement.) The rate also applies to regularly scheduled Board meetings lasting for more than two hours (2 hours).

At the request of the Board, Agent shall provide Agent's clerical staff to perform the additional functions required at ANNUAL MEETINGS, such as sign-in, balloting, etc., at an additional expense to the Association. (Refer to rate schedule 13.0, item 3 of this agreement.)

3.02 Policies. Agent will assist the Board in the administration of provisions of the Association instruments and the policies, rules, and regulations promulgated by the Board. Agent will also assist the Board in drafting rules and regulations which may from time to time be needed.

3.03 Rule Enforcement. Agent will report to the Board and give notice to the violator of any written complaint Agent receives pertaining to violations of the Declaration, Bylaws, or Rules. (Refer to rate schedule 13.0, item 4 of this agreement.)

Should the Board request Agent to handle the administrative notices required under their fining/hearing procedures, Agent shall be paid a fee by the Association, plus the costs of certified mail, if required. Agent shall be entitled to charge an additional fee for attendance at any hearing scheduled for rule violations. The Board may thereafter, in the hearing, make the determination to assess the Unit Owner the cost of said administrative costs. (Refer to rate schedule 13.0, item 5 of this agreement.)

3.04 Insurance Coverage. At the Board's direction and under its control, Agent shall assist in the selection of all Association insurance policies, at the Association's expense, for the various coverages required in the Declaration. The agent assumes no liability for the adequacy or types of coverages.

3.05 Insurance Claims/Accidents. At a cost to the Association per rate schedule 13.0 of this agreement, Agent shall promptly investigate and make full written report as to all accidents or claims for damage relating to the operation and maintenance of the Association common areas, including any damage or destruction to the common areas of the Association property and the estimated cost of repair and shall cooperate in having made any and all repairs required by any insurance company in connection therewith. Agent shall not be compensated for handling any accident or claim in an amount less than the insurance deductible. In any insurance claim which exceeds the deductible, Agent shall include its charges in the insurance claim.

Agent shall not be responsible for insurance claims of the individual unit owner.

3.06 Answering Service. Agent will provide a 24-hour, 7-day-a-week telephone answering service and reliable response chain for communication with unit owners for emergency service within Association's general responsibilities. An emergency is defined as a situation that threatens the safety of a person or damage to the common area.

3.07 Records File. Agent shall maintain a complete roster of unit owners and data necessary to properly administer the Association's affairs. Such roster shall at all times be available to the Board.

Agent shall keep the records of the Association, which shall include all original minutes, contracts, and financial reports. All records shall be returned to the Board upon its written request or upon termination of this contract. All electronic records are deemed to be the property of Agent.

3.08 Correspondence File. Agent shall keep the Board advised of any business matters or obligations of the Association of which Agent is aware, including governmental matters, independent contractors, unit owners, and other individuals or entities with which the Association or its representatives have or should have a business relationship. Agent shall also keep accurate and permanent records of all substantive correspondence. All original records will be returned to the Board upon its written request.

3.09 On-Site Responsibility. Agent shall periodically have a representative on the premises of the Association during normal business hours, Monday through Friday. Property activity will dictate when inspections are conducted.

3.10 Control Over Independent Contractors. Agent shall hire and discharge such independent contractors as may be necessary to operate and maintain the Association Property with any change to be approved by the Board.

3.11 Copies. Agent will supply any necessary photocopies at a cost. (Refer to rate schedule 13.0, item 7 of this agreement.)

3.12 Developer Relations. This agreement does not contemplate agent's involvement with Developer related matters, including developer walk thru and walk thru list. Any such work shall require approval of the Board and be billed to the Association. (Refer to rate schedule 13.0, items 8 and 9 of this agreement.)

4.0 AGENT'S DUTIES – MAINTENANCE

4.01 Repairs. Agent shall, at the Association's expense, and in accordance with standards established by the Board, cause the common areas of the Association to be maintained and/or repaired.

For any one item of repair, replacement, or refurbishing the expense incurred shall not exceed the sum of Fifteen Hundred Dollars (\$1,500.00) unless specifically authorized by the Board, excepting, however, that emergency repairs involving danger to persons or property, or immediately necessary for the preservation and safety of the property or its residents, may be made by the Agent irrespective of the above cost limitation. Notwithstanding this authority as to emergency repairs, it is understood that the Agent will, if at all possible confer immediately with the President of the Board regarding emergency expenditures, or if unavailable, any other Board Member.

4.02 Contract Specifications. Agent shall prepare specifications for bids on contracts relating to snow plowing, landscaping, and cleaning if needed. Agent shall fully cooperate with consultants that may be retained by the Board to draft specifications for specialized projects. Agent may also be requested to draft specialized specifications at a charge to the Association. (Refer to rate schedule 13.0, item 10 of this agreement.)

4.03 Bidding. When requested by the Board, Agent shall solicit three bids for contracts relating to snow plowing, landscaping, cleaning, and rubbish removal, if applicable, and routine maintenance projects. Additional bids, beyond the first three, or for "non routine projects" shall result in Agent receiving compensation. (Refer to rate schedule 13.0, item 11 of this agreement.)

4.04 Contracts. The Board shall select the contractor. Agent and/or Board shall execute the contract, which shall be in the name of and on behalf of the Association. Agent shall furnish to the Board a copy of every contract at the first Board meeting subsequent to its execution.

4.05 Supplies. Agent shall place orders and obtain such equipment, tools, appliances, materials, and supplies which are necessary to maintain the common areas of the Association property. All orders shall be in the name of the Association.

4.06 Credits. When taking bids or issuing purchase orders, Agent shall act at all times under the direction of the Board and shall be under a duty to secure for and credit to the Association any discount, commissions, or rebates obtainable as a result of such contract or purchase.

4.07 Supervision. All direct contact with independent contractors shall be through the Agent, except in an emergency. Board shall immediately notify Agent of any contact it has had with independent contractors. All independent contractors must provide proof of workers comp. and insurance coverage in an adequate amount, unless waived by the Board.

The Board shall notify Agent in writing of any observations, complaints, suggestions, etc. relating to the quality of the performance of an independent contractor.

Agent shall enforce contractual obligations and/or warranties in accordance with the dictates of the board.

5.0 AGENT'S DUTIES – ADVISING

5.01 Standards. Agent shall advise the Board in an attempt to operate and maintain the common areas of the Association property in a 'first class' condition, according to generally accepted industry standards.

5.02 Capital Improvements. Agent shall, if it deems necessary, make recommendations for capital improvements and other improvements that would benefit the Association.

6.0 AGENT'S DUTIES – FINANCIAL

Agent will develop and recommend for Board approval a financial program and operating budget.

6.01 Annual Budget. At least sixty (60) days before the beginning of each new fiscal year, the Agent shall prepare a proposed budget setting forth an itemized statement of the anticipated receipts and disbursements for the new fiscal year based on the then-current schedule of monthly assessments and taking into account the general condition of the properties. Each such budget shall be submitted to the Board at a Board meeting for its approval.

Agent shall attempt to operate within said annual budget and there shall be no substantial variance therefrom, unless specifically authorized by Board. By this it is meant, no expenses may be incurred or commitments made by Agent in connection with the maintenance and operation of the Association in excess of the total amounts allocated to the various classifications or expenses in the approved budget without the proper consent of the Board, except that if due to unforeseen circumstances, because of an emergency or lack of sufficient time to obtain such proper consent, an overrun may be experienced, which will be brought to the attention of the Board by the receipt of the next monthly financial statement.

6.02 Financial Records. Agent shall maintain records, books, and accounts, which shall be subject to examination by the Board without charge and by Unit Owners or their authorized agents with prior notice, during normal office hours and for a fee payable to the Agent. (Refer to rate schedule 13.0, item 12 of this agreement.)

The original of all records is deemed to be the property of the Association. The bookkeeper's attendance at an Association meeting or research of an owner's account for more than three months back will be charged to the Association. (Refer to rate schedule 13.0, item 13 of this agreement.)

6.03 Monthly Report. Agent shall render to the Board, on or before the twentieth (20th) day of each month, a fund accounting monthly statement or cash receipts and disbursements, a Balance Sheet and Income Statement, a monthly budget comparison, a listing of all past due accounts and a listing of all checks issued in the prior month, except that the final year end statement will not be submitted, until all closing information is received, but no later than 90 days following year end.

6.04 Method of Billing. Coupon payment books will be mailed or delivered annually to the membership. All payments not received by the 10th of the month may be assessed an additional charge based on Board directive. The agent reserves the right to change the method of billing.

6.05 Mailings. All mailings will be at the cost of the Association including cost of paper, envelopes, and postage.

6.06 Delinquent Accounts. The Board shall institute such legal action as may be required for the collection of delinquent monthly assessments. The Association shall be responsible for legal/court costs. The Agent is not responsible for collections of delinquent accounts. In accordance with Board policy, the Agent will forward a monthly report of delinquencies to, and will fully cooperate with the Association's attorney to collect any delinquencies on behalf of the Association. All charges will be passed on to the delinquent homeowner if allowed by the Association documents.

6.07 Account Insurance. Under Board directive, Agent shall establish and maintain, in a bank or Savings & Loan whose deposits are insured by the Federal Deposit Insurance Corporation or Federal Savings & Loan Insurance Corporation or otherwise as the Board may direct, and in a manner to indicate the custodial manner thereof, an account as Agent or Association for the deposit of ONLY Association's monies, with authority to draw thereon for any payments to be made by Agent to discharge any liabilities or obligations incurred pursuant to this Agreement and the payment of Agent's fee. Reserve funds of the Association may not be withdrawn or transferred without the signature of a Board Member. All payments shall be made by check and all accounts held under the Association's Federal Identification Number. Reserve funds of the Association may not be withdrawn or transferred without the signature of a Board Member.

6.08 Federal Filings Required. Agent shall, at the cost of the Association, cause the preparation of returns required by law in connection with unemployment insurance, disability benefits, Worker's Compensation Insurance, Social Security benefits and other similar taxes now in effect or hereinafter imposed. The Agent shall not be responsible for the preparation of annual corporate tax returns.

6.09 Financial Questions. Agent's responsibility to owners to answer questions pertaining to the financial affairs of the Association shall be limited to the account of the individual owners. All other owner inquiries will be referred to the Board and/or its accountant for response.

6.10 Annual Independent Review. The Agent will cooperate with an independent Certified Public Accountant in the performance of an audit or review which has been authorized by the Board. Should Agent's clerical staff be needed for said audit or review, Agent shall be entitled to a fee per labor hour plus copy costs and other supplies used. (Refer to rate schedule 13.0, item 14 of this agreement.)

7.0 BONDING AND INSURANCE OF AGENT AND ITS EMPLOYEES

7.01 Bonding. Those employees of the Agent who handle or are responsible for the handling of the Association's monies shall, without expense to the Association, be bonded by a fiduciary bond.

7.02 Insurance. The Association shall cause its public liability insurance to be written so as to protect the Managing Agent in the same manner and extent as the Association, Board of Managers and Unit Owners. The limits of said insurance shall be not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence and One Million Dollars (\$1,000,000.00) in respect of damage to or destruction of property arising out of any one occurrence.

8.0 LIMITATION OF LIABILITY, INDEMNIFICATION

8.01 Agency Relationship. Everything done by Agent under the agreement shall be done as agent of the Association, and all obligations or expenses incurred thereunder shall be for the account, on behalf and at the expense of Association, except that Association shall not be obligated to pay the overhead expenses of Agent's office. Any payments to be made by Agent thereunder shall be made out of such sums as are available in the special account(s) of the Association or as may be provided by the Association. Agent shall not be obligated to make any advance to or for the account of Association or to pay any sum except out of funds held or provided as aforesaid, nor shall Agent be obligated to incur any liability or obligations for the account of the Association without assurance that the necessary funds for the discharge thereof will be provided.

8.02 Acts of Agent. Agent, its officers and employees shall be responsible for their own acts of willful or wanton misconduct and/or negligence, errors and omissions, if not covered by the Association's policy of insurance. Copy of insurance coverage to be provided to the Association on request.

8.03 Acts of Others. Association agrees to save Agent harmless to the limits and extent of its liability insurance for any actions or claims of a third party arising out of Agent's performance of its duties under this Agreement. Neither Agent, its officers nor its employees shall be responsible for any acts, including the willful or wanton misconduct or gross negligence of contractors hired by Agent pursuant to this Agreement. Association agrees to save Agent harmless in any claim or action of third parties arising out of any violation or alleged violation by Association, unit owner, or employees, of any law, ordinance, regulation or order of any governmental authority. Association agrees to defend at its own cost any action arising from the foregoing and to indemnify Agent for losses suffered therefrom.

8.04 Reproduction/Distribution Limitations. Association will not reproduce or distribute any forms, specifications, or concepts provided to Association by Agent to third parties without prior written permission of Agent.

9.0 TERMINATION

This agreement may be terminated by either party with or without cause and without termination fee on ninety (90) days prior written notice, sent by certified or registered mail.

Upon receipt of notice of termination, Agent agrees to follow the transition procedure as adopted by the Northern Ohio Chapter of the Community Associations Institute.

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

After receipt of a notice of termination, and except as otherwise directed by the Board, the Agent shall place no further order with subcontractors for materials, service or facilities, except as may be necessary for completion of such portion of work under the contract that may have been approved, by the Board, prior to termination.

A date and time shall be set for a meeting to take place in Agent's principal office on or before the last day of the term of the Agreement, for the purpose of surrendering to the Association all record, all funds and deposit accounts (except for any escrow account established under these provisions), and to execute any agreement and releases relating to the conclusion of contractual obligations.

10.0 COMPENSATION

10.01 Base Fee. The base fee compensation which the Agent shall be entitled to receive from the Association for services performed under this Agreement shall be a fee payable monthly in the amount of Eight Hundred Fifty Five Dollars (\$855.00) per month. Payment is due on or before the 10th of each month for the month's services. New Associations will be charged a one-time setup fee payable the first month of the contract. (Refer to rate schedule 13.0, item 15 of this agreement.) By agreement between the Management and the Board, the compensation payable to Management may be amended to the amount reflected each year in the operating budget as adopted and approved for the ensuing year.

10.02 Extraordinary Services. All charges for extraordinary services will be billed to the Association within thirty (30) days of rendering such service.

10.03 Dishonored Negotiable Instruments. Where Agent is required to process NSF or other dishonored negotiable instruments, Agent shall be entitled to a fee per instrument so handled and the charge for such special handling shall be applied to the owner's account. (Refer to rate schedule 13.0, item 16 of this agreement.)

10.04 Escrow Demand and Transfer Fees. Agent shall process Escrow Demands, rendering information on status of unit owner's account, insurance coverage, property questionnaires, closing confirmation of account and processing of Association owner record changes for a fee. Said fee will be charged to Seller. (Refer to rate schedule 13.0, item 17 of this agreement.)

10.05 Services Involving Refinancing. Agent shall process requests from lenders for information on status of unit owner's account, insurance coverage, and property questionnaires for a fee. Said fee will be charged to unit owner who is refinancing. (Refer to rate schedule 13.0, item 18 of this agreement.)

10.06 Services Involving Litigation. This includes, but is not limited to, litigation between the Association and its developer, any small claims court action by or against the Association, any injunction suit by or against an individual homeowner, any bankruptcy proceeding, or otherwise. Any such service shall be compensated to the Agent and, unless required by Court Order, shall only be rendered by Agent on the prior request and authorization of the Board of Directors. Subject to the exclusion following, where Agent is named a Defendant in a litigation as a result of its activities as Agent for the Association, Association will defend Agent, its Officers, Directors, and employees. Agent shall be compensated for such cost of litigation both as to actual costs incurred and an hourly rate. Association and Agent further agree that should the highest court of competent jurisdiction hearing the case render a judgement against Agent resulting from Agent's negligent or intentional act or failure to act, Agent shall be entitled to receive no compensation under this Paragraph hereof for service performed in preparation of said litigation for defense or for time actually spent in court, hearing or otherwise. (Refer to rate schedule 13.0, item 19 of this agreement.) The provisions of this paragraph shall survive the termination of this Agreement. Association shall not be liable for payment of any above stated fees should the Association be involved in litigation against the Agent.

10.07 Attorney Liaison. The Agent will serve as liaison between the Association and the Association's designated attorney regarding legal matters. Notwithstanding the general categorization of the Agent as an independent contractor, for purposes of any type of communication with the Association's legal counsel, the Agent shall be deemed the functional equivalent of an employee and the attorney-client privilege between the Association and its legal counsel extends to the Managing Agent.

11.0 NOTICES

All notices required hereunder shall be in writing and shall be deemed given if delivered in person or mailed by certified or registered mail addressed as follows:

To the Association President:
Current Association President

To the Agent:
Steve Avner, President
R. N. Landis Management Co.
23549 Mercantile Rd., Ste B
Beachwood, Ohio 44122

12.0 ASSIGNABILITY

This Agreement shall inure to the benefit of and constitute a binding obligation upon the parties hereto. This agreement is not assignable without the prior written consent of the Board.

13.0 ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement between the contracting parties and no variance or modification thereof shall be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

For the convenience of the parties, this Agreement has been executed in several counterparts which are in all respects identical and each of which shall be deemed to be complete in itself so that any one may be introduced in evidence or used for any other purpose without the production of the other counterparts.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

Signed in the presence of:

R. N. LANDIS MANAGEMENT CO.

By _____
Steve Avner, President

Signed in the presence of:

**HERRINGTON PLACE HOMEOWNERS'
ASSOCIATION, INC.**

By _____
, President
