

MANAGEMENT AGREEMENT

This Agreement is made and entered into on this 24th day of October, 2003, by and between Fleming Gardens Homeowners Association ("Association") and Keith S. Collins Company, LLC ("Collins").

WITNESSETH:

WHEREAS, the Association has formed a members' association as described in the Master Deed recorded in the Register's Office of Shelby County, Tennessee; and

WHEREAS, Collins is in the business of providing property management services; and

WHEREAS, the Association wishes to retain Collins to provide property management services to the Association in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the covenants and undertakings specified herein, the Association and Collins hereby agree as follows:

1. **Purpose.** The purpose of entering into this Agreement is to relieve the individual members of the Board of Directors (the "Board") and officers of the Association, from certain duties and responsibilities of managing the Association including the day to day duties and responsibilities of maintaining the Association property and for the purpose of providing efficient, professional management for the Association property.

2. **Management Services.** During the term of this Agreement, Collins will provide the following property management services:

- a. Assist in preparing an operating budget for each accounting fiscal year.
- b. Maintain a separate operating bank account in the name of the Association for depositing all collections.
- c. Maintain savings accounts and/or certificates of deposit for reserve funds as directed by the Board of Directors.
- d. Review, approve and pay invoices for common area expenses from the operating bank account. Any nonrecurring expenditure in excess of \$1,000 shall be approved by the Board or a designated officer.
- e. Prepare a member directory with address and telephone numbers and furnish to all homeowners upon request.
- f. Provide a monthly income statement and budget comparison report with results for the current month and year-to-date (comparing actual figures to budgeted figures).

- g. Provide a statement for the monthly accounting and status of Association fees by individual member.
- h. Send delinquent notices for Association dues to members when required.
- i. Reconcile all bank statements monthly.
- j. Assist in establishing the annual Association fee required for operations.
- k. Assist in establishing a budget for replacement reserve items such as repaving, landscaping, lighting, etc.
- l. Assist in establishing the requirement relating to any special assessments.
- m. Assist in the preparation of insurance specifications for the Association's property and liability coverage for purposes of securing insurance coverage proposals.
- n. Provide access to the books and records including receipts and invoices for review by any Board member, officer or Association member upon reasonable request.
- o. Attend the annual meeting to discuss financial results for the year, and/or other issues.
- p. Conduct periodic physical inspections noting any deficiencies, deferred maintenance, or other issues that need to be addressed by management. Provide narrative summary in letter form each month giving state of condition of buildings, property, and possessions of the Association.
- q. Prepare requisite 1099's at year-end.
- r. Coordinate filing of civil warrants and liens with counsel selected by Collins if necessary to pursue delinquent Association dues or special assessments.
- s. Solicit and negotiate bids for service contracts and/or upgrades and repairs to common areas and amenities including the pool, fountains, detention pond, lighting, fences and streets for the Board to review. Monitor the work of all service contractors including procuring certificates of insurance from all contractors used. Arrange for work scheduling including commencement and completion times of all work to be performed.
- t. Prepare and mail annual dues statements for each Association member prior to the first of each annual period.
- u. Respond to reasonable and appropriate homeowner requests and complaints regarding common area maintenance issues.
- v. Include the Association in the answering service network for Collins for emergency calls.
- w. Monitor compliance of members' actions with required covenants as outlined in the Association's Master Deed and By-Laws. Assist the Association in enforcing all rules and regulations set forth in the Master Deed and other related documents.
- x. Monitor and enforce architectural compliance provisions as outlined in the covenants and restrictions.
- y. Assist in completing mortgagee "Association Questionnaires" regarding financing for new property owners.
- z. Distribute prepared newsletters upon request by the Board of Directors. All copying, mailing and other direct costs will be absorbed by the Association.

3. **Compensation.** As compensation for the services performed under this Agreement, the Association shall pay Collins a management fee of \$350.00 per month payable on the first business day of each month in advance. The management fee is in addition to the

reimbursement by the Association of postage costs incurred by Collins in connection with its duties hereunder.

4. **Expenses.** Collins shall not be required to make any advance to or for the account of the Association or to pay any sum or incur any liability except out of the funds held or provided by the Association. If Collins shall elect to advance any money in connection with the performance of its duties pursuant to this Agreement, the Association agrees to reimburse Collins forthwith and hereby authorizes Collins to be reimbursed out of the Association's bank operating account for any such advances.

5. **Insurance.** At all times during the term of this Agreement is in force, the Association shall maintain, at its own expense, comprehensive general liability insurance, insuring both the Association and Collins against loss, damage or injury to property or persons which might arise out of the occupancy, management, operation, or maintenance of the property. Such insurance policy shall include or provide for (a) bodily injury coverage of no less than One Million Dollars (\$1,000,000) per person; (b) property damage coverage not less than Five Hundred Thousand Dollars (\$500,000) per occurrence; (c) an agreement by the insurer that it will not cancel such policy except after thirty (30) days prior written notice to Collins; and (d) an agreement by the insurer that any loss payable under such policy shall be payable notwithstanding any act or negligence of Association or Collins which might, absent such agreement, result in a forfeiture of all or a part of such insurance premium, and such insurance policy shall be in a form reasonably satisfactory to Collins. Collins will be named as an additional insured on all such policies. Original certificates or copies of policies evidencing such insurance shall be delivered to Collins upon execution of this Agreement and thereafter at least thirty (30) days prior to expiration of the existing policies. If any such insurance policy or certificate is not so delivered to Collins or in the event any such insurance policy is cancelled, whether or not Collins has the policy in his possession, and no reinstatement or replacement policy is received prior to termination of the insurance, Collins, without written notice to or demand upon Association may, but shall not be obligated to, obtain such insurance with such company as Collins may deem satisfactory, and pay the premium therefor, and the amount of any premium so paid shall be charged to and promptly paid by the Association.

6. **Indemnity.** In addition to any indemnity accruing to Collins by virtue of the Master Deed and By-Laws, the Association shall indemnify, defend and save Collins and Keith Collins, individually, harmless from and against all losses, costs, damages, expenses or attorney fees in connection with the Association or the Association property including any liability for damage to property or injuries to or death of any employee or other person whomsoever. Neither Collins nor Keith Collins, individually, shall be liable to the Association, its Board, officers or members for any act or omission, negligence, tortuous or otherwise, of any officer, director, agent, member or employee of or in the Association or of Collins, and Collins shall be indemnified and saved harmless by the Association from all claims, actions, liabilities, loss, damage, cost or expense, including reasonable attorney's fees, by reason of any such act or omission in connection with Collins' obligations and performance under this Agreement.

The Association shall indemnify, defend and save Collins harmless from all litigation, attorneys fees in any proceeding or suit involving an alleged violation of any constitutional

provision, statute, ordinance, law or regulation of any governmental body pertaining to environmental protection, fair housing or fair employment including, without limitation, those prohibiting or making illegal discrimination on the basis of race, creed, color, religion or national origin in the sale, rental or other disposition of housing or any services rendered in connection therewith or in connection with employment practices.

7. **Term.** This Agreement for management services shall be in effect commencing on December 1, 2003, for a term of one year. This Agreement may be canceled without cause by either party providing a minimum of ninety (90) days written notice to the other party. If the Agreement is canceled by either party, Association will be responsible for payment of all compensation and expenses through the last day of the ninety (90) day period. If not terminated by the end of any term, this Agreement will automatically renew for a like term.

8. **Waivers.** No waiver by either party of any breach or non-performance of any provision or obligation of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision of this Agreement.

9. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee. Any litigation brought with respect to this Agreement shall be brought in a court of competent jurisdiction in Shelby County, Tennessee, and each party hereby consents to the personal jurisdiction and venue of such courts.

10. **Entire Agreement.** This Agreement contains the entire understanding of the parties. It may not be changed orally but only by a writing signed by both parties. This Agreement supersedes all prior agreements, oral or written, between the parties and no representations, inducements, promises, or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

11. **Force Majeure.** If Collins is prevented or delayed at any time in the performance of its services because of casualty, causes beyond Collins' control, inclement weather, acts of terrorism, actions resulting from any executive order or proclamation, or acts of God, it will not be deemed a breach of contract, nor will there be any mitigation or reduction of any compensation due from the Association.

12. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable by a Court of competent jurisdiction, then such provision shall be amended by the parties hereto so as to make it valid, legal and enforceable, but keeping it as close as to the original meaning as possible. The invalidity, illegality, or unenforceability of any provision shall not affect in any manner the other provisions herein contained, which remain in full force and effect.

13. **Captions.** Captions contained herein in no way limit or extend the meaning of any section, or the provisions therein, and are to be used for reference purposes only.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

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

ASSOCIATION:

FLEMING GARDENS
HOMEOWNERS ASSOCIATION

By: Earl Williams

Printed Name: Earl Williams

Title: _____

COLLINS:

KEITH S. COLLINS, LLC,
a Tennessee limited liability company

By: Keith S. Collins
Keith S. Collins, President

11/5/03