

PENOBSCOT SHORES MANAGEMENT AGREEMENT

MANAGEMENT AGREEMENT (the "Agreement") dated as of June 20th, 1996, between **Waldo County Healthcare Management Company** ("Manager"), and **Penobscot Shores Association** ("Cooperative"), both Maine corporations.

PREAMBLE:

Cooperative intends to own and operate a certain retirement community located in Belfast, Maine which will be known as **Penobscot Shores** (the "Facility") and will have the sole right to operate the same.

Manager has the resources to manage such a retirement community.

Cooperative desires to engage Manager, and Manager is willing, to manage the Facility, pursuant to the terms and conditions set forth herein.

NOW THEREFORE, the parties hereto agree as follows:

1. Retention of Manager. Cooperative hereby retains Manager to provide management services in connection with the Facility under the terms and conditions set forth herein.
2. Responsibilities of Manager. Manager shall provide the following management, consulting and advisory services to Cooperative in connection with the operation of the Facility:

2.1 Personnel.

- a. Facility Director. Manager shall select, employ and direct the performance of a person acceptable to Cooperative to serve as the Facility Director, who shall be responsible for the day to day operation of the Facility. The Facility Director may be an employee of Manager but, in any case, the costs of employing the Facility Director shall be borne by Cooperative.

b. Other Personnel and Service Providers. Manager shall select and direct the performance of all persons and service providers necessary to maintain and operate the Facility and provide services to the residents. The costs of employing such personnel and providers shall be borne by Cooperative.

2.2 Rules and Policies. Manager shall recommend operational policies from time to time to Cooperative's Board of Directors for its approval.

2.3 Eligibility Determinations. Manager shall approve all residents for initial or continued occupancy at **Penobscot Shores** based on criteria provided in the Cooperative's bylaws and in accordance with the procedures set forth in the Residency Agreements. Manager shall also determine when residential units at **Penobscot Shores** may remain vacant and under what circumstances the Cooperative's stockholders may sublet their residential units.

2.4 Maintenance and Repair. At Cooperative's expense, Manager shall maintain the Facility in good repair in accordance with the Budgets adopted by the Board of Directors and shall arrange for such cleaning, painting, decorating, plumbing, carpentry, grounds care and such other maintenance and repair work as may be necessary to so maintain the Facility.

2.5 Capital Equipment and Improvements. Manager shall advise Cooperative as to capital equipment and Facility improvements which are needed to maintain or upgrade the quality of the Facility, or to replace obsolete or run-down capital equipment. Manager shall, at Cooperative's expense, make all approved repairs, replacements and maintenance within the budgetary limits set forth in the Budgets (as hereinafter defined) adopted by the Board of Directors. Notwithstanding such limitations, Manager shall be entitled, without Cooperative's consent, to make or commit Cooperative to make unbudgeted expenditures for the purposes of emergency repairs involving manifest danger to persons or property or required to avoid suspension of any necessary service at the Facility.

2.6 Financial Services.

a. Bookkeeping and Accounting. Manager shall provide banking, bookkeeping and accounting procedures necessary for the operation of the Facility and the preparation of proper financial records.

b. Reports. Manager shall prepare and provide to Cooperative any reasonable financial information which may from time to time be specifically requested by Cooperative, including regular statements of income and expenses, and shall assist Cooperative's independent certified public accountants with the preparation of annual financial statements, including a balance sheet.

c. Payment of Facility Expenses. Manager shall pay on a timely basis from Cooperative's funds and for its benefit all expenses incurred in the operation of the operation of the Facility, including, but not limited to, lease payments under the Ground Lease and payment of Manager's fees and expenses hereunder.

d. Budgets. The fiscal year for the Facility shall be a calendar year. At least sixty (60) days prior to the start of each calendar year, Manager shall prepare and submit to the Board of Directors for its review and approval draft annual operating and capital expenditure budgets for the following year, including proposed monthly fees for residents of the Facility (collectively, the "Budgets"). Such Budgets shall be prepared in compliance with the obligation of the Cooperative under the Ground Lease, and in particular shall be established at levels reasonably deemed necessary to adequately provide for capital and replacement reserves. Upon final adoption of the Budgets, the Manager shall be entitled to make or commit Cooperative to make expenditures which are reflected in the Budgets, as well as expenditures which individually do not exceed ten percent (10%) of the amounts set forth therein for the applicable expense item and which in the aggregate do not exceed fifty percent (50%) of the amounts set aside in the Budgets as the reserve for contingencies. Except for emergency repairs referred to in Section 2.5, any unbudgeted expenditures and/or expenditures in excess of the Budget authorizations provided for in this Section shall be subject to the approval of the Board of Directors.

e. Fees and Charges for Additional (A la Carte) Services. Manager shall recommend fees to be charged to residents for additional services provided from time to time by the Cooperative on an ala carte basis.

2.7 Insurance. Manager shall purchase on the Cooperative's behalf such policies of insurance as are required under the Ground Lease and otherwise prudent, consistent with the Budgets established by the Board of Directors.

2.8 Public Relations; Marketing. Manager shall develop and coordinate a public relations and marketing program for Cooperative and shall oversee the implementation of such program. Such activities shall include maintenance of a "wait list" of individuals interested in residing at **Penobscot Shores**.

2.9 Exclusive Sales Agent. For its services relative to the resale of any unit, Manager shall be paid a Stock Transfer Fee of up to 8% of the gross sale proceeds of such unit, as more fully described in the Residency Agreements. The Manager shall cause each unit being sold to be refurbished as necessary to maintain the quality and appearance of the Facility and shall pay for such refurbishing from its Stock Transfer Fee.

2.10 Regulatory Compliance. Manager shall manage the operations of the Facility in compliance with all applicable laws and regulations, and Manager shall use reasonable efforts promptly to notify Cooperative of any new laws or regulations applicable to the Facility. Manager shall obtain and maintain all operating licenses, permits, qualifications and approvals from any applicable governmental or regulatory authority necessary for the lawful operation of the Facility as a retirement community.

2.11 Compliance with Ground Lease. Manager shall take all necessary steps to cause Cooperative to comply with all covenants under the Ground Lease applicable to Cooperative.

3. Responsibilities of Cooperative. Cooperative shall enforce against its stockholders, directors and officers each of the obligations, agreements or understandings contained herein and contained in the Ground Lease, its Articles of Incorporation and bylaws, and the Residency Agreements, including provisions relating to voting rights, the election of a Board of Directors, eligibility to reside at the Facility and the resale of units. Cooperative shall not seek to terminate or amend this Agreement without the Manager's consent and the vote of stockholders owning at least seventy-five percent (75%) of the outstanding shares of Cooperative's stock.

4. Term. The term of this Agreement (the "Term") shall commence on the date hereof (the "Commencement Date") and shall continue perpetually unless earlier terminated as provided in this Agreement. In the event that the parties mutually agree to terminate this Agreement, Manager shall assist Cooperative with an orderly transition of the Facility's operations to a new manager.

5. Management Fees. For services performed hereunder, Cooperative shall pay to Manager the following:

5.1 Management Fee. Cooperative shall pay to Manager a base monthly management fee at the rate set by Manager of up to six percent (6%) of the Gross Revenues collected by the Cooperative during the immediately preceding month. "Gross Revenues" shall mean all revenues accruing to the Cooperative including, but not limited to, residents' monthly fees and revenues from the provision of additional services offered to residents at Penobscot Shores. The management fee shall be prorated for any partial month.

5.2 Expense Reimbursement. Cooperative shall reimburse Manager for all direct costs incurred by it in performing its duties hereunder, including the following:

a. Salary and related benefits payable with respect to the Facility Director, and other employees and agents of the Facility;

b. Reasonable out-of-pocket travel and other expenses incurred by the Facility Director and other employees or agents of Manager in connection with the performance of their obligations hereunder; and

c. Any other out-of-pocket expenses not previously reimbursed by Cooperative incurred by Manager in maintaining or operating the Facility in accordance with this Agreement.

5.3 Method of Payment. Cooperative shall pay the amounts set forth in Sections 5.1 and 5.2 monthly, in arrears.

6. Default. Either party may terminate this Agreement at the occurrence of any of the following events ("Events of Default"):

6.1 By Manager. With respect to Manager, the following shall constitute Events of Default hereunder:

a. Manager shall fail to keep, observe or perform any material agreement, term or provision of this Agreement, and after written notice thereof shall have been given to Manager by Cooperative, specifying the event or events constituting the default, Manager shall fail to diligently remedy such default; or

b. Manager shall apply for or consent to the appointment of a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law; or an order, judgment or decree shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Manager a bankrupt or insolvent or approving a petition seeking reorganization of Manager, or appointing a receiver, trustee or liquidator of Manager or of all or a substantial part of its assets, and such order shall remain undismissed, undischarged or unbonded for a period of ninety (90) days.

6.2 By Cooperative. With respect to Cooperative, the following shall constitute Events of Default hereunder:

a. Cooperative shall fail to make or cause to be made any payment to Manager required to be made hereunder, and such default shall continue for a period of thirty (30) days after written notice thereof shall have been given to Cooperative;

b. Cooperative shall fail to keep, observe or perform any material agreement, term or provision of this Agreement and such default shall continue for a period of thirty (30) days after written notice thereof shall have been given to Cooperative by Manager, which notice shall specify the event or events constituting the default;

c. Cooperative shall fail to make payments or keep any covenants owing to any third party which are beyond the control of Manager to make or keep, and the effect of such failure is to cause, or to permit such third party to cause, in Manager's reasonable opinion, a substantial risk that Cooperative will lose possession of the Facility buildings, major equipment or property essential to the overall operation of the Facility;

d. Cooperative shall be dissolved or shall apply for or consent to the appointment of a receiver, trustee or liquidator of Cooperative or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file, or have filed against it, a petition or an answer seeking reorganization or arrangement with creditors or taking advantage of any insolvency law; or an order, judgment or decree

shall be entered by a court of competent jurisdiction, on the application of a creditor, adjudicating Cooperative a bankrupt or insolvent or approving a petition seeking reorganization of Cooperative, or appointing a receiver, trustee or liquidator of Cooperative or of all or a substantial part of its assets and such order shall remain undismissed, undischarged or unbonded for a period of ninety (90) days; or

e. Cooperative shall cause the Facility to violate any law, the violation of which materially affects the operation of the Facility, and such violation continues beyond a period for correction allowed by law.

7. Remedies Upon Event Of Default.

7.1 Remedies of Manager. Upon the occurrence of an Event of Default by Cooperative and at any time thereafter, Manager may, in its discretion, do any one or more of the following:

a. Terminate this Agreement and declare all sums earned but unpaid to the date of termination to be immediately due and payable; upon payment whereof neither party shall have any further obligations whatsoever under this Agreement except for obligations incurred prior to such termination; or

b. Exercise any other right or remedy available to it under applicable law, including without limitation, the right to recover damages for the breach hereof.

7.2 Remedies of Cooperative. Upon the occurrence of any Event of Default by Manager and at any time thereafter, Cooperative may, in its discretion, do any one or more of the following:

a. Terminate this Agreement, whereupon Manager shall remove the Facility Director from the Facility, and neither party shall have any further obligation whatsoever under this Agreement except for obligations incurred prior to such termination; or

b. Exercise any other right or remedy available to it under applicable law, including, without limitation, the right to recover damages for the breach hereof;

provided, however, in either case Cooperative shall immediately pay to Manager all amounts due and owing to Manager through the date of termination (net of any damages suffered or incurred by Cooperative, if any, arising from the events giving rise to such termination, which Cooperative may offset in paying such fees).

7.3 Rights Cumulative; No Waiver. No right or remedy herein conferred upon or reserved to either of the parties hereto is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter legally existing.

8. Miscellaneous.

8.1 Relationship of the Parties. The relationship of Manager to Cooperative shall be that of an independent contractor, and all acts performed by Manager pursuant to this Agreement during the Term shall be deemed to be performed in its capacity as an independent contractor.

8.2 Liability. Neither Manager nor Cooperative will be liable in the performance of its duties for any loss incurred by or damage to the other, unless such loss or damage results from the gross negligence or willful misconduct of the first party.

8.3 Employee Non-Solicitation. Recognizing the unique services provided by employees of Manager, during the term of this Agreement and for a period of two (2) years after termination of this Agreement, Cooperative shall not, without Manager's prior written consent, (i) directly solicit or employ the Facility Director or any other employee of Manager providing services with respect to the Facility, or (ii) directly solicit any employees of Manager to become employees of Cooperative.

8.4 Waiver. The waiver of any of the terms hereof by either Cooperative or Manager, or the failure of Cooperative or Manager to require the strict performance of any of the terms hereof shall not be deemed to be a waiver or modification of any such term or terms and shall not affect the right of either party to enforce such term(s) or to demand strict performance thereof at any future time.

8.5 Assignment. This Agreement shall not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, Manager may assign its rights and obligations hereunder to an entity

controlling, controlled by or under common control with Manager, so long as a sufficient number of trained personnel continue to be responsible for fulfilling the obligations of such assignee hereunder. In addition, Manager may pledge its interest in this Agreement to any lender who is providing financing in connection with the development, maintenance or operation of the Facility or the real property on which the Facility is located.

8.6 Binding Nature. This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties.

8.7 Notices. All notices required or permitted hereunder shall be given in writing and shall be personally delivered, delivered by facsimile or be sent by registered or certified mail, postage prepaid, to the following addresses or at such other places as either party shall designate in writing:

If to Manager: **Waldo County Healthcare
Management Company**
56 Northport Avenue
P.O. Box 287
Belfast, Maine 04915

If to Cooperative: **Penobscot Shores Association**
56 Northport Avenue
P.O. Box 287
Belfast, Maine 04915

Notices shall be deemed effective upon receipt.

8.8 Entire Agreement. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior understandings, agreements or arrangements, oral or written, between the parties.

8.9 Amendment. This Agreement shall not be modified or amended except by written instrument signed by both of the parties and in compliance with the Ground Lease, the Cooperative's bylaws and the Residency Agreements.

8.10 Captions. The captions and headings used herein are for convenience of reference only and shall not be construed in any manner to limit or modify any of the terms hereof.

8.11 Attorneys' Fees. In the event either party brings an action to enforce this Agreement, the prevailing party in such action shall be entitled to recover from the other all costs incurred in connection therewith, including reasonable attorneys' fees.

8.12 Severability. In the event one or more of the provisions of this Agreement is deemed to be invalid, illegal or unenforceable in any respect under applicable law, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be impaired thereby.

8.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute but one and the same instrument.

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

8.15 Definitions. Unless otherwise provided herein, the terms used in this Agreement shall have the meanings provided in the Residency Agreements to be entered into between Cooperative and the residents of **Penobscot Shores**.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be duly executed by its duly authorized officers, as of the date first above written.

Cooperative:

PENOBSCOT SHORES ASSOCIATION

By: Margaret Hughes
Its Executive Director

Manager:

**WALDO COUNTY HEALTHCARE
MANAGEMENT COMPANY**

By: Jeff A. Desanti
Its President