



PROPERTY MANAGEMENT AGREEMENT
(NOTE: Not to be used as a leasing agreement)

DRAFT 03/22/2021

THIS PROPERTY MANAGEMENT AGREEMENT ("Agreement") is made and entered into by and between
and

WHEREAS, Owner desires to engage Agent to manage the Property on behalf of Owner in accordance with the terms and conditions herein set forth. For purposes of this Agreement, "Property" shall be:

(Address)

(Legal Description/Description)

If this box is checked, "Property" shall mean that property described on Exhibit A attached hereto and incorporated herewith by reference as if fully set forth herein.

NOW THEREFORE, in consideration of the mutual covenants, it is agreed as follows:

1. Authority of Agent and Responsibilities of Agent and Owner:

- a. Agent is hereby charged with the sole and exclusive management of the Property. Agent shall exercise due diligence and care in the operation and management of the Property, protect Owner's interest at all times, and inform Owner when in its opinion changes in operating or management procedures are advisable.
b. Agent shall use its best efforts to collect rents becoming due and take all reasonable precautions against loss by Owner. Agent shall not under any circumstances be liable for any uncollected or uncollectible rents. Owner authorizes Agent to request, demand, collect, receive and receipt for all such rent. Notwithstanding the foregoing, Agent shall not employ any collection agency or other third party to seek the collection of any delinquent account or bring suit to effect collection of any such delinquency without obtaining Owner's prior written consent. If Owner's consent is given, the cost of employing such agency or party shall be an expense of operation. Agent is authorized to institute and prosecute such proceedings in small claims court as may be necessary and advisable, in Agent's opinion, to recover rents and other sums due Owner from tenants or to evict tenants and regain possession, including the authority, in Agent's discretion, to settle, compromise and release any and all such small claims proceedings. The cost of any small claims proceeding shall be an expense of operation.
c. Agent shall operate and maintain building(s) and grounds (including the employment and supervision of sufficient qualified personnel to accomplish such purpose) in a manner consistent with Owner's goals and objectives. Agent is authorized to hire, supervise, discharge and pay all servants, employees, contractors, or other personnel necessary to be employed in the management, maintenance and operation of the Property. All employees shall be deemed employees of Owner, and Agent shall not be liable to Owner or others for any act or omission on the part of such employees. All local, state, and federal taxes and assessments (including, but not limited to, Social Security taxes, unemployment insurance, and workers' compensation insurance) incident to the employment of such personnel shall be paid by Agent out of Owner's funds and shall be treated as operating expenses. Agent shall not be liable to such employees for their wages or compensation.

Agent shall enforce fairly the various rules and regulations which Owner or Agent may from time to time adopt to protect the Property or the peace of the building(s) and its tenants. Owner shall not take any action or adopt any policy or rule the effect of which would be to prevent Agent from offering the Property for rental in compliance with all applicable federal, state and municipal laws and regulations, including, but not limited to, those laws and regulations prohibiting discrimination on the basis of race, color, religion, sex, national origin, handicap or familial status in the leasing of the Property. THE BROKER SHALL CONDUCT ALL BROKERAGE



ACTIVITIES IN REGARD TO THIS AGREEMENT WITHOUT RESPECT TO THE RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, HANDICAP OR FAMILIAL STATUS OF ANY PARTY OR PROSPECTIVE PARTY **TO THE AGREEMENT**. FURTHER, REALTORS® HAVE AN ETHICAL DUTY TO CONDUCT SUCH ACTIVITIES WITHOUT RESPECT TO THE SEXUAL ORIENTATION OF ANY PARTY OR PROSPECTIVE PARTY **TO THIS AGREEMENT**.

- d. Agent shall pay promptly (subject to Owner having available funds with Agent), when due, all authorized labor, services, utilities and materials charges and credit to Owner all earned discounts.
- e. Agent shall submit to Owner monthly statements of income and expenses (on a cash basis) and remit to Owner net proceeds.
- f. Agent shall perform the services contracted for herein for the fees stipulated in **Section Paragraph 2**.
- g. Agent is authorized to retain such amounts from Owner's rental proceeds as may be necessary from time to time to establish and maintain a reserve fund on behalf of Owner in the amount of \$ _____, from which Agent may pay expenses associated with the management and operation of the Property for which Owner is responsible hereunder. In the event expenses, including fees, exceed funds on hand, Owner shall pay such excess to Agent promptly upon written demand for payment of such expenses.
- h. Owner shall pay for all advertising and sales promotion approved in advance in writing by Owner.
- i. Agent assumes no liability whatsoever for any acts or omissions of Owner or any previous owners of the Property, or any previous management or other agent of either. Agent assumes no liability for any failure of or default by any tenant in the payment of any rent or other charges due Owner or in the performance of any obligations owed by any tenant to Owner pursuant to any lease or otherwise. Agent shall not be liable for damage to and at the Property by vandalism, affirmative act, violations of environmental or other regulations or other cause not occasioned directly by Agent. Any such regulatory violations or hazards discovered by Agent shall be brought to the attention of Owner in writing, and Owner shall promptly cure them. Owner shall indemnify, defend, and save Agent harmless from any and all claims, loss, damage, cost, expense (including attorneys' fees) and liability arising in connection with Agent's performance of its duties under this Agreement (subject to Agent's obligations under this Agreement), or any and all claims for personal injury or property damage caused by neglect or willful act of Owner incurred or occurring in, on, or about the Property.

2. **Agent's Fee:** Owner shall pay Agent **each** month for its services a fee of _____% of the rent collected for that period or \$ _____, whichever is more, while this Agreement is in full force and effect.

As to any leases entered into after the effective date of this Agreement, a fee of _____% of the scheduled monthly income will be due and payable to Agent for management services rendered during that period of time when a lease is in effect, but tenant is not yet paying rent due to concessions made by Owner.

If the Property is sold by the Owner during the term of this Agreement or any extension thereof, a fee of _____% of the gross sales price of the Property will be paid to the Agent as consideration for transition and sale assistance services. Gross sales price includes any and all consideration received or receivable, in whatever form, by Seller including, but not limited to, the assumption or release of existing liabilities.

If this box is checked, Agent's Fees shall be as set forth on the schedule on Exhibit B attached hereto and incorporated herewith by reference as if fully set forth herein.

3. **Late Payment Fees/Administrative Charges:** Any late payment fees, returned check charges or other administrative fees authorized by leases at the Property shall belong to and shall be paid to Agent.

4. **Termination; Modification:**

a. THE TERM OF THIS AGREEMENT SHALL BE FOR A TWELVE-MONTH PERIOD COMMENCING ON _____, BUT SHALL BE RENEWED AUTOMATICALLY FOR EACH ADDITIONAL TWELVE-MONTH PERIOD IF PRIOR WRITTEN NOTICE OF TERMINATION IS NOT GIVEN BY EITHER PARTY WITHIN SIXTY (60) DAYS BEFORE THE END OF EACH TWELVE-MONTH PERIOD.

- b. No amendment or modification to this Agreement shall be effective unless it is in writing and executed by Owner and Agent. This Agreement may be terminated on thirty (30) days prior written notice by the Agent or the Owner if either shall not promptly discharge its obligations faithfully in the manner herein provided.
- c. This Agreement shall also terminate under the following circumstances:
 - (i) In the event that the Owner sells its interest in and to the Property, in its entirety, to a third party. Such termination shall be effective as of the date of the closing of such sale, provided that Owner shall have given Agent at least thirty (30) days prior written notice of such sale.
 - (ii) In the event the holder of any mortgage, deed of trust, deed to secure debt or other similar instrument encumbering Owner's interest in the Property ("Lender") gives written notice to Agent that the Lender elects to terminate this Agreement. Such termination shall be effective upon the succession by Agent to all right, title and interest of Owner and to the Property, provided that Lender shall have given Agent at least thirty (30) days prior written notice of Lender's succession to title to the Property.

In the event this Agreement is terminated by either Owner or Lender in accordance with this **Section Paragraph**, Agent shall receive no management compensation beyond the date of termination and shall have no further obligations hereunder beyond the effective date of termination, provided, however, that Agent shall be entitled to the compensation provided in **Section Paragraph** 3 hereof for transition and sale assistance services.

- d. In the event this Agreement is terminated by either Owner or Agent in accordance with **Section Paragraph** 4(a) or (b) above, Agent shall receive no management compensation beyond the date of termination and shall have no further obligations hereunder beyond the effective date of termination. **NOTWITHSTANDING THE ABOVE, IN THE EVENT THAT OWNER OR AGENT TERMINATES THIS AGREEMENT FOR ANY REASON, THEN OWNER SHALL PAY AGENT A TRANSITION FEE OF \$ _____ WITHIN THIRTY (30) DAYS OF THE EFFECTIVE DATE OF TERMINATION.**
- e. Within forty-five (45) days of the effective date of any termination, Owner or Agent each shall take such steps as are necessary to settle all accounts between them, including the following: (1) Agent shall render to Owner all funds then on hand after having deducted therefrom any Agent's fees then due and amounts sufficient to cover all other outstanding expenditures of Agent incurred in connection with operating the Property; (2) Agent shall render to Owner records showing all tenants who paid security deposits under leases affecting the Property; (3) Agent shall transfer to Owner any security deposits held by Agent; (4) Agent shall deliver to Owner copies of all tenant's leases and other instruments entered into on behalf of Owner (Agent may retain copies of such leases and agreements for Agent's records); (5) Owner shall pay to Agent any fees or amounts due Agent under the Agreement and shall reimburse Agent for any expenditures made on behalf of Owner and outstanding at the time of termination; and (6) Owner shall notify all current tenants of the termination of the agency status and transfer of security deposits, if applicable.

5. Subordination: This Agreement is subordinated to any mortgage, lien, or deed of trust, and no purchaser under any foreclosure or accepting a deed in lieu of foreclosure shall be bound hereby or liable for any payments hereunder.

6. Notices: Notices and other communications will be deemed to have been given when delivered by hand or dispatched by means of electronic mail or facsimile transmission or nationally recognized air courier, or on the third business day after being deposited in the United States mail, postage prepaid, addressed to the attention of:

Owner: _____ **Agent:** _____

7. Receivership; Bankruptcy; Reorganization; Insolvency Proceedings: If Owner or Agent shall apply for or consent to the appointment of a receiver, trustee or liquidator 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 come due, make general assignment for the benefit of

creditors, file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Owner or Agent in any bankruptcy, reorganization or insolvency proceedings, or if an order, judgment or decree shall be entered by any court of competent jurisdiction on the application of a creditor, adjudicating Owner or Agent a bankrupt or insolvent or approving a petition seeking reorganization of Owner or Agent or appointing a receiver, trustee or liquidator of Owner or Agent or of all or a substantial part of its assets, then, in case of any such event, the term of this Agreement shall expire at the non-distressed party's option on five (5) days written notice to the other.

8. Books and Records: Agent shall maintain at its principal office adequate and separate books and records in connection with its management and operation of the Property. Such books and records shall be kept in accordance with sound bookkeeping practices and North Carolina Real Estate Commission Rules. Owner shall have the right and privilege of examining said books and records as relate directly to this Agreement and Agent's management of the Property at Agent's principal office, at any and all reasonable times, upon two (2) business days notice to Agent.

9. Insurance and Indemnity:

a. Owner shall carry public General Liability insurance, including property damage and personal injury, in the amount of not less than \$ _____ per occurrence, \$ _____ aggregate. Owner agrees that it will not make any claim against or seek to recover from Agent for any loss or damage to the Property or Owner coverable by such insurance. Owner agrees that at all times during the continuance of this Agreement all property damage and personal injury insurance carried by Owner on the Property shall, without cost to Agent, extend to insure and indemnify Agent, as well as Owner, by endorsement of such insurance coverage to specifically name Agent as an additional insured as its interest may appear. Such coverage shall be deemed to be primary coverage.

b. Agent shall promptly investigate and report to Owner and to the appropriate insurer all accidents and claims for damage relating to the ownership, operation and maintenance of the Property and any damage or destruction to the Property.

c. Agent shall provide and maintain comprehensive General Liability insurance policies, including Umbrella or Excess Liability coverages, without deductible, and endorsed to include broad form General Liability supplement or its equivalent, broad form Contractual Liability coverage (including both written and oral agreements) and non-owned and hired auto coverage (if applicable), and Automobile Liability insurance for claims made for personal injury and damage to property of others in the amount of not less than \$ _____ per occurrence, \$ _____ aggregate. To the extent that this insurance covers the same risks and events as the liability insurance provided under **subsection subparagraph** (a) above, this insurance shall be deemed to be secondary coverage.

d. All insurance policies required to be provided by or on behalf of Agent under this Agreement shall be evidenced by Certificates of Insurance. All Certificates of Insurance shall indicate that policies will not be canceled or materially changed without thirty (30) days prior written notice to Owner. As used in this Agreement, the term "insurance policy" shall include any extensions or renewals of an insurance policy. Before commencing any activities under this Agreement, Agent shall provide Owner with Certificates of Insurance evidencing the coverages required.

10. Taxes and Assessments: Owner shall be responsible for and shall file all income, personal property and other tax returns. Owner shall pay when due all taxes and assessments on or related to the Property and the operation of the Property.

11. Compliance with Legal Requirements: Agent shall take such action as may be necessary to comply with any and all orders or requirements affecting the Property by any federal, state, county or municipal authority having jurisdiction, and the cost of so doing shall be an expense of operation. Agent may cause the same to be complied with or may make repairs in the event of any emergency (without Owner's prior consent), if the cost does not exceed \$ _____, without Owner's written approval; provided, however, Agent shall not take any such action if Agent or Owner is contesting any such order or requirement. If the cost thereof exceeds \$ _____ or if the violation might expose Agent or Owner to a fine, penalty or criminal liability, Agent shall immediately communicate with Owner in person so that arrangements may be promptly made for compliance with such orders or requirements. Agent shall prepare and, after obtaining the written approval of Owner, file any such reports and documents with respect to the Property as may be required by any local, state or federal authority.

12. Parties and Benefit: This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns and their personal representatives. Owner agrees that at any time during the term of this Agreement, Agent may either

assign Agent's rights and responsibilities hereunder to another real estate agency, or transfer to another person or entity all or part of the ownership of Agent's real estate agency, and that in the event of any such assignment or transfer, this Agreement shall continue in full force and effect; provided, that any assignee or transferee must be licensed to engage in the business of real estate brokerage in the State of North Carolina. In the event of any such assignment or transfer, Owner may terminate this Agreement without cause on sixty (60) days' prior written notice to the assignee or transferee of Owner's intent to terminate this Agreement.

13. **Mediation:** If a dispute arises out of or related to this Agreement or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. If the need for mediation arises, the parties will choose a mutually acceptable mediator and will share the cost of mediation equally.
14. **Miscellaneous:** (a) This Agreement contains the entire agreement of the parties and supercedes all prior written and oral proposals, understandings, agreements and representations, all of which are merged herein; (b) this Agreement shall not be strictly construed against either the Owner or the Agent; (c) **Section Paragraph** headings are used only for convenience of reference and shall not be considered as a substantive part of this Agreement; (d) the parties acknowledge and agree that: (i) the initials lines at the bottom of each page of this Agreement are merely evidence of their having reviewed the terms of each page, and (ii) the complete execution of such initials lines shall not be a condition of the effectiveness of this Agreement. (e) words in the singular shall include the plural and the masculine shall include the feminine and neuter genders, as appropriate; (f) no waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise; (g) the invalidity of one or more provisions of this Agreement shall not affect the validity of any other provisions hereof and this Agreement shall be construed and enforced as if such invalid provisions were not included; and (h) this Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina and in the event of a dispute, any legal proceeding may only be instituted in the county where the Property is located. If legal proceedings are instituted to enforce any provision of this Agreement, the prevailing party in the proceeding shall be entitled to recover from the non-prevailing party reasonable attorneys fees and court costs incurred in connection with the proceeding.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

OWNER:

Individual

Date: _____

Date: _____

Business Entity

(Name of Entity)

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

AGENT:

(Name of Firm)

By: _____

Name: _____

Individual License #: _____ **State:** _____

Date: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____