



The Voice for Real Estate™ in Delaware

# PROPERTY MANAGEMENT AGREEMENT

\_\_\_\_\_ ("Owner") and \_\_\_\_\_ ("Broker") agree as follows:

**1. APPOINTMENT OF BROKER:** Owner hereby appoints and grants Broker the exclusive right to rent, lease, operate and manage the property(ies) known as:

\_\_\_\_\_ ,

and any additional property that may later be added to this Agreement ("Property"), upon the terms below, for the period beginning (date) \_\_\_\_\_ and ending (date) \_\_\_\_\_, at 11:59 PM. (If checked:)  Either party may terminate this Property Management Agreement ("Agreement") on at least 30 days written notice \_\_\_\_\_ months after the original commencement date of this Agreement. After the exclusive term expires, this Agreement shall continue as a nonexclusive agreement that either party may terminate by giving at least 30 days written notice to the other.

- 2. BROKER ACCEPTANCE:** Broker accepts the appointment and grant, and agrees to:
  - A.** Use due diligence in the performance of this Agreement.
  - B.** Furnish the services of its firm for the rental, leasing, operation and management of the Property.
- 3. AUTHORITY AND POWERS:** Owner grants Broker the authority and power, at Owner's expense, to:
  - A. ADVERTISING:** Display FOR RENT/LEASE and similar signs on the Property and advertise the availability of the Property, or any part thereof, for rental or lease.
  - B. RENTAL; LEASING:** Initiate, sign, renew, modify or cancel rental agreements and leases for the Property, or any part thereof; collect and give receipts for rents, other fees, charges and security deposits. Any lease or rental agreement executed by Broker for Owner shall not exceed \_\_\_\_\_ year(s) or  shall be month-to-month. Unless Owner authorizes a lower amount, rent shall be:  at market rate; OR  a minimum of \$ \_\_\_\_\_ per \_\_\_\_\_; OR  see attachment.
  - C. TENANCY TERMINATION:** Sign and serve in Owner's name notices that are required or appropriate; commence and prosecute actions to evict tenants; recover possession of the Property in Owner's name; recover rents and other sums due; and, when expedient, settle, compromise and release claims, actions and suits and/or reinstate tenancies.
  - D. REPAIR; MAINTENANCE:** Make, cause to be made, and/or supervise repairs, improvements, alterations and decorations to the Property; purchase, and pay bills for, services and supplies. Broker shall obtain prior approval of Owner for all expenditures over \$ \_\_\_\_\_ for any one item. Prior approval shall not be required for monthly or recurring operating charges or, if in Broker's opinion, emergency expenditures over the maximum are needed to protect the Property or other property(ies) from damage, prevent injury to persons, avoid suspension of necessary services, avoid penalties or fines, or suspension of services to tenants required by a lease or rental agreement or by law, including, but not limited to, maintaining the Property in a condition fit for human habitation as required by Del. Law § 5305 (a).
  - E. REPORTS, NOTICES AND SIGNS:** Comply with federal, state or local law requiring delivery of reports or notices and/or posting of signs or notices.
  - F. CONTRACTS; SERVICES:** Contract, hire, supervise and/or discharge firms and persons, including utilities, required for the operation and maintenance of the Property. Broker may perform any of Broker's duties through attorneys, agents, employees, or independent contractors and, except for persons working in Broker's firm, shall not be responsible for their acts, omissions, defaults, negligence and/or costs of same.
  - G. EXPENSE PAYMENTS:** Pay expenses and costs for the Property from Owner's funds held by Broker, unless otherwise directed by Owner. Expenses and costs may include, but are not limited to, property management compensation, fees and charges, expenses for goods and services, property taxes and other taxes, Owner's Association dues, assessments, loan payments and insurance premiums.

Owner's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Broker's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Owner Name: \_\_\_\_\_ Date: \_\_\_\_\_

- H. **SECURITY DEPOSITS:** Receive security deposits from tenants, which deposits shall be  given to Owner, or  placed in Broker's trust account and, if held in Broker's trust account, such account shall be designated as a separate security deposit account and shall not be commingled with any other operating funds. The Broker shall disclose to tenant the location of the security deposit account as required by Del. Law § 5513 (a).
  - I. **TRUST FUNDS:** If permitted by applicable law, deposit all receipts collected for Owner, less any sums properly deducted or disbursed, in a financial institution whose deposits are insured by an agency of the United States government. The funds shall be held in a trust account separate from Broker's personal accounts. Broker shall not be liable in event of bankruptcy or failure of a financial institution.
  - J. **RESERVES:** Maintain a reserve in Broker's trust account of \$ \_\_\_\_\_.
  - K. **DISBURSEMENTS:** Disburse Owner's funds held in Broker's trust account in the following order:
    - (1) Compensation due Broker under paragraph 8.
    - (2) All other operating expenses, costs and disbursements payable from Owner's funds held by Broker.
    - (3) Reserves and security deposits held by Broker.
    - (4) Balance to Owner.
  - L. **OWNER DISTRIBUTION:** Remit funds, if any are available, monthly (or  \_\_\_\_\_ ), to Owner.
  - M. **OWNER STATEMENTS:** Render monthly (or  \_\_\_\_\_ ), statements of receipts, expenses and charges for each Property.
  - N. **BROKER FUNDS:** Broker shall not advance Broker's own funds in connection with the Property or this Agreement.
  - O. **KEYSAFE/LOCKBOX:**  (If checked) Owner authorizes the use of a keysafe/lockbox to allow entry into the Property and agrees to sign a keysafe/lockbox addendum (Form KLA).
4. **OWNER RESPONSIBILITIES:** Owner shall:
- A. Provide all documentation, records and disclosures as required by law or required by Broker to manage and operate the Property, and immediately notify Broker if Owner becomes aware of any change in such documentation, records or disclosures, or any matter affecting the habitability of the Property.
  - B. Indemnify, defend and hold harmless Broker, and all persons in Broker's firm, regardless of responsibility, from all costs, expenses, suits, liabilities, damages, attorney fees and claims of every type, including but not limited to those arising out of injury or death of any person, or damage to any real or personal property of any person, including Owner, for: (i) any repairs performed by Owner or by others hired directly by Owner; or (ii) those relating to the management, leasing, rental, security deposits, or operation of the Property by Broker, or any person in Broker's firm, or the performance or exercise of any of the duties, powers or authorities granted to Broker.
  - C. Maintain the Property in a condition fit for human habitation as required by Del. Law § 5305 (a).
  - D. Carry and pay for: (i) public and premises liability insurance in an amount of no less than \$1,000,000; and (ii) property damage and worker's compensation insurance adequate to protect the interests of Owner and Broker. Broker shall be, and Owner authorizes Broker to be, named as an additional insured party on Owner's policies.
  - E. Pay any late charges, penalties and/or interest imposed by lenders or other parties for failure to make payment to those parties, if the failure is due to insufficient funds in Broker's trust account available for such payment.
  - F. Immediately replace any funds required if there are insufficient funds in Broker's trust account to cover Owner's responsibilities.
5. **OWNER REPRESENTATIONS:** Owner represents that, unless otherwise specified in writing, Owner is unaware of: (i) any recorded Notice of Default affecting the Property; (ii) any delinquent amounts due under any loan secured by, or other obligation affecting, the Property; (iii) any bankruptcy, insolvency or similar proceeding affecting the Property; (iv) any litigation, arbitration, administrative action, government investigation, or other pending or threatened action that does or may affect the Property or Owner's ability to transfer it; and (v) any current, pending or proposed special assessments affecting the Property. Owner shall promptly notify Broker in writing if Owner becomes aware of any of these items during the term of this Agreement.

Owner's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Broker's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Owner Name: \_\_\_\_\_ Date: \_\_\_\_\_

**6. TAX WITHHOLDING:** If Owner is a nonresident alien individual, a foreign entity, or other non-U.S. person, (Foreign Investor) Owner authorizes Broker to withhold and transmit to the Internal Revenue Service (IRS) 30% of the GROSS rental receipts unless Owner elects to treat rental income as "effectively connected income" by submitting to Broker a fully completed IRS form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade of Business in the United States. A Foreign investor Owner will need to obtain a U.S. tax payer identification number and file a declaration with the IRS regarding effectively connected income in order to complete the form given to Broker. Further, the Foreign Investor Owner will be responsible for making any necessary estimated tax payments.

**7. DISCLOSURE:**

**A. LEAD-BASED PAINT**

(1)  The Property was constructed on or after Jan 1, 1978.

**OR (2)**  The Property was constructed prior to 1978.

(i) Owner has no knowledge of lead-based paint or lead-based paint hazards in the housing except: \_\_\_\_\_

(ii) Owner has no reports or records pertaining to lead-based paint or lead-based paint hazards in the housing, except the following, which Owner shall provide to Broker: \_\_\_\_\_

**B. POOL/SPA DRAIN**

Any pool or spa on the property does (or,  does not) have an approved anti-entrapment drain cover, device or system.

**8. COMPENSATION:**

**A.** Owner agrees to pay Broker fees in the amounts indicated below for:

(1) Management: \_\_\_\_\_

(2) Renting or Leasing: \_\_\_\_\_

(3) Evictions: \_\_\_\_\_

(4) Preparing Property for rental or lease: \_\_\_\_\_

(5) Managing Property during extended periods of vacancy: \_\_\_\_\_

(6) An overhead and service fee added to the cost of all work performed by, or at the direction of, Broker: \_\_\_\_\_

(7) Other: \_\_\_\_\_

**B.** This Agreement does not include providing on-site management services, property sales, refinancing, preparing Property for sale or refinancing, modernization, fire or major damage restoration, rehabilitation, obtaining income tax, accounting or legal advice, representation before public agencies, advising on proposed new construction, debt collection, counseling, attending Owner's Association meetings or \_\_\_\_\_

If Owner requests Broker to perform services not included in this Agreement, a fee shall be agreed upon before these services are performed.

**C.** Broker may divide compensation, fees and charges due under this Agreement in any manner acceptable to Broker.

**D.** Owner further agrees that:

(1) Broker may receive and keep fees and charges from tenants for: (i) requesting an assignment of lease or sublease of the Property; (ii) processing credit applications; (iii) any returned checks and/or (  if checked) late payments; and (iv) any other services that are not in conflict with this Agreement.

(2) Broker may perform any of Broker's duties, and obtain necessary products and services, through affiliated companies or organizations in which Broker may own an interest. Broker may receive fees, commissions and/or profits from these affiliated companies or organizations. Broker has an ownership interest in the following affiliated companies or organizations: \_\_\_\_\_

Owner's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Broker's Initials ( \_\_\_\_\_ ) ( \_\_\_\_\_ )

Reviewed by \_\_\_\_\_ Date \_\_\_\_\_



Owner Name: \_\_\_\_\_ Date: \_\_\_\_\_

Broker shall disclose to Owner any other such relationships as they occur. Broker shall not receive any fees, commissions or profits from unaffiliated companies or organizations in the performance of this Agreement, without prior disclosure to Owner.

(3) Other: \_\_\_\_\_

- 9. **AGENCY RELATIONSHIPS:** If permitted by applicable law, Broker may act, and Owner hereby consents to Broker acting, as dual agent for Owner and tenant(s) in any resulting transaction. Owner understands that Broker may have or obtain property management agreements on other property, and that potential tenants may consider, make offers on, or lease through Broker, property the same as or similar to Owner's Property. Owner consents to Broker's representation of other owners' properties before, during and after the expiration of this Agreement.
- 10. **NOTICES:** Any written notice to Owner or Broker required under this Agreement shall be served by sending such notice by first class mail or other agreed-to delivery method to that party at the address below, or at any different address the parties may later designate for this purpose. Notice shall be deemed received three (3) calendar days after deposit into the United States mail OR  \_\_\_\_\_

**11. DISPUTE RESOLUTION**

**A. MEDIATION:** Owner and Broker agree to mediate any dispute or claim arising between them out of this Agreement, or any resulting transaction before resorting to arbitration or court action, subject to paragraph 11B(2) below. Paragraph 11B(2) below applies whether or not the arbitration provision is initialed. Mediation fees, if any, shall be divided equally among the parties involved. If, for any dispute or claim to which this paragraph applies, any party commences an action based on a dispute or claim to which this paragraph applies, without first attempting to resolve the matter through mediation, or refuses to mediate after a request has been made, then that party shall not be entitled to recover attorney fees, even if they would otherwise be available to that party in any such action. THIS MEDIATION PROVISION APPLIES WHETHER OR NOT THE ARBITRATION PROVISION IS INITIALED.

**B. ARBITRATION OF DISPUTES:** (1) (If checked)  Subject to the exclusions in paragraph 11B(2) below, Owner and Broker agree that any dispute or claim in law or equity arising between them regarding the obligation to pay compensation under this Agreement, which is not settled through mediation, shall be decided by neutral, binding arbitration, as set forth in the arbitration agreement attached hereto and incorporated by reference.

**(2) EXCLUSIONS FROM MEDIATION AND ARBITRATION:** The following matters are excluded from mediation and arbitration hereunder: **(i)** a judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust or mortgage; **(ii)** an unlawful detainer action; **(iii)** the filing or enforcement of a mechanic's lien; and **(iv)** any matter that is within the jurisdiction of a probate, small claims, or bankruptcy court. The filing of a court action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the mediation and arbitration provisions.

- 12. **EQUAL HOUSING OPPORTUNITY:** The Property is offered in compliance with federal, state and local anti-discrimination laws.
- 13. **ATTORNEY FEES:** In any action, proceeding or arbitration between Owner and Broker regarding the obligation to pay compensation under this Agreement, the prevailing Owner or Broker shall be entitled to reasonable attorney fees and costs from the non-prevailing Owner or Broker, except as provided in paragraph 11A.
- 14. **ADDITIONAL TERMS:**  Keysafe/Lockbox Addendum (Form KLA);  Lead-Based Paint and Lead-Based Paint Hazards Disclosure (Form FLD)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 15. **APPLICABLE LAW AND PARTIAL INVALIDITY:** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of Delaware. If any part of this Agreement shall be declared invalid or unenforceable, Broker shall have the option to terminate this Agreement by notice to Owner.

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