

Owner/Agent Agreement

Agreement made as of the _____ day of _____, 20____.

Between _____

Located at _____, (the ("Owner")), and _____
_____ Located at _____, (the "Agent").

The Owner and the Agent agree as follows:

Article 1

1.1 Contract Documents

This Contract consists of the instant Agreement together with the General Conditions of the Contract for Managing Agents and the Management Plan, attached hereto and made a part hereof as if fully set forth herein. The Contract Documents shall be complementary and what is specified in any one shall be as binding as if specified by all.

Article 2

2.1 Exclusive Agency

Owner hereby appoints Agent as the sole and exclusive management agent of Owner's property known as _____ (the "Project"), which consists of _____ dwelling units.

Article 3

3.1 The Work

The Agent shall perform all the work required by the Contract Documents. All such work shall be in accordance with the provisions of the Contract Documents and the rules and regulations, directives and orders of the New York State Division of Housing and Community Renewal or Commissioner thereof ("DHCR" or "Commissioner").

Article 4

4.1 Term

The Contract shall become effective as of the _____ day of _____, 20____, and shall continue in full force and effect until the _____ day of _____, 20____. Thereafter, it shall continue in full force and effect from month-to-month unless renewed or terminated as provided in the General Conditions Contract for Managing Agents. Notwithstanding the above, the contract shall not be effective or binding unless and until the approval of DHCR is endorsed hereon.

Article 5

5.1 Total Compensation

The total compensation which the Agent shall be entitled to receive subject to the provisions of Article 8 of the General Conditions of the Contract for Managing Agents, for all services to be performed under the Contract, shall be the sum of the items set forth below:

- a. **Managing Agent Base Rate Fee** -- \$ _____ per month.
- b. **Marketing Fee** -- \$ _____
For each residential apartment rented to a new tenant. This amount shall be due and payable only after receipt by the Owner of the first month's rent and security deposit for the apartment rented. The Agent shall receive no compensation for renewing residential leases with tenants already in occupancy, but shall arrange such renewals as part of the services to be performed under the Contract;
- c. **Commercial and Professional Leasing Fee** -- Six percent (6%) of the annual rental for the first year for each new professional or commercial tenant. For each successive year of the original term, six percent (6%) of the increase in annual rent over the preceding year. For renewals of existing professional or commercial tenants and for each successive year of the renewed term, six percent (6%) of the increase in annual rent over the preceding year. Compensation for professional or commercial rentals or renewal shall be due and payable monthly only after receipt by the Owner of the first month's rent and security deposit and only if no brokerage commissions have been charged.
- d. **Site Manager Reimbursement** -- \$ _____ per year payable in equal monthly installments. This amount represents the share of the site manager's compensation which is attributable to the Project in accordance with the Management Plan, annual operating budget and the rules and regulations of DHCR.

5.2 Payment Procedures

All payments to the Agent shall be in accordance with the procedures set forth in the General Conditions of the Contract for Managing Agents and the rules, regulations, directives and orders of DHCR.

Article 6

6.1 Non-Discrimination

Agent shall, in performing his duties under this Contract, comply with the provisions contained in the Rider A of this Contract, annexed hereto and made part hereof.

This Contract entered into as of the day and year first written above.

Owner _____ **Agent** _____

By _____ **By** _____
Signature Signature

Name/Title (Please Type) Name/Title (Please Type)

Approved: _____ **Date:** _____

New York State Division of Housing and Community Renewal

By _____
Signature

Name/Title (Please Type)

**General Conditions Of The
Contract For Managing Agents**

Article 1

1.1 Contract Documents

The Contract Documents consist of the Owner-Agent Agreement, the General Conditions of the Contract for Managing Agents and the Management Plan.

1.2 The Contract

The Contract Documents form the Contract for Managing Agents. This Contract represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a modification approved in the manner set forth in Section 10.3.

Article 2

2.1 Owner

The Owner is the person or entity identified as such in the Owner-Agent Agreement. The term Owner means the Owner or his authorized representative.

Article 3

3.1 Agent

The Agent is the person or entity identified as such in the Owner-Agent Agreement. The term Agent means the Agent or his authorized representative.

Article 4

4.1 Project

The Project is the housing development and appurtenant facilities owned by the Owner and identified as such in the Owner-Agent Agreement.

Article 5

5.1 Division of Housing and Community Renewal

“DHCR” is the New York State Division of Housing and Community Renewal and the Commissioner thereof.

5.2 Supervision

The Contract is subject to the Private Housing Finance Law of the State of New York, rules and regulations promulgated by the Commissioner and all orders and directives issued by the Commissioner and/or DHCR. It shall not be effective unless and until the approval of DHCR is endorsed thereon.

Article 6

6.1 Personnel – Agent’s Employees

The Agent shall hire in its own name all personnel necessary for the efficient discharge of its duties hereunder, with the exception of project personnel as listed in the Management Plan and the Project’s operating budget approved by DHCR. Except as hereinafter provided, compensation for the services of Agent’s employees shall be the sole responsibility of the Agent. Subject to the approval of the Owner and DHCR, or at the direction of DHCR, the Agent shall employ a site manager consistent with the needs of the housing development. The Agent shall be reimbursed by the Owner for up to fifty percent (50%) of either the site manager’s entire salary and fringe benefits approved by DHCR or, in the event of a part-time site manager, a pro-rated portion of the salary and fringe benefits approved by DHCR.

6.2 Project Personnel

The Agent agrees to supervise the work of, hire and discharge project personnel. Project personnel shall be hired in the name of the Owner and Agent shall not be responsible for their wages or compensation. Both Owner and Agent agree that the utilization and compensation of project personnel shall be in accordance with the Management Plan and the Project’s operating budget approved by DHCR.

6.3 Fidelity Bond

The Owner shall furnish evidence that the Managing Agent, its trustees, directors, officers, agents, servants, and employees, whether compensated or not compensated, are insured by a fidelity bond equal to at least twenty-five percent (25%) of the annual rent roll of the Project. The Agent’s coverage is to be by means of a Managing Agent’s Rider (Blanket Form – “All Managing Agents”) to the Owner’s fidelity bond. The bond shall be issued by an insurer duly licensed by the Superintendent of Insurance of the State of New York to transact fidelity bond business in the State of New York and shall provide that any payment made thereunder shall be payable to the Owner. A copy of the bond shall be furnished to DHCR and shall provide that no change in or cancellation of, the bond, whether by notice given by the insured or by the Underwriter, shall take effect prior to the expiration of thirty (30) days after notice by certified mail of such change or cancellation has been received by the NYS Division of Housing and Community Renewal, Housing Management Bureau, Insurance Unit.

Article 7

7.1 General Duties

It is the responsibility of the Owner to provide safe and habitable housing and to maintain the physical and financial integrity of the Project. It is the function of the Agent to effectively and efficiently manage the Project so as to assure that the Owner’s responsibilities are carried out. In addition to the provisions of the Contract, both Owner and Agent agree to manage the Project in accordance with the provisions of the Private Housing Finance Law of the State of New York, rules and regulations promulgated by the Commissioner, all orders and directives issued by the Commissioner and/or DHCR, and the requirements under applicable federal programs.

7.2 Project Management

The Owner shall prepare, or cause to be prepared, for DHCR review, a Management Plan in accordance with the rules and regulations of DHCR as the same may be amended from time to time. The Contract shall not be effective unless DHCR has approved the Management Plan in writing. Any Modification of the Management Plan is subject to the prior approval of DHCR.

7.3 General Administration

- a. **Personnel** – The Project shall be staffed in accordance with the DHCR – approved housing company budget, Management Plan and with the rules and regulations of DHCR. Recruitment, training and promotion of such staff shall be in accordance with the affirmative action plan contained in the Management Plan. Any proposed staffing changes shall be submitted to DHCR for prior approval.
- b. **Income Review** – The Agent shall:
 1. conduct annual income reviews and comply with DHCR procedures and the rules and regulations of DHCR and, where applicable, the United States Department of Housing and Urban Development (“HUD”);
 2. satisfy all HUD requirements with respect to recertification of tenant income; and
 3. make timely rent adjustments, assessments of surcharges, and appropriate interim changes.
- c. **Reports** - In addition to any other reports which may be required, the Agent shall submit to DHCR the following reports on or before the dates indicated:
 1. monthly operating report – 10th day of the following month;
 2. where required, HUD excess income report – 10th day of the following month;
 3. HM-3 (Utility Consumption Record) – August 31 and at time of budget submission;
 4. HM-38 (Summer Maintenance of Heating Equipment) – August 31; and
 5. monthly reports on marketing activity and tenant arrears – 10th day of the following month.
- d. **Contract Procedures** – The Agent is authorized, in the name of and at the expense of the Owner, to enter and shall enter into contracts for the proper maintenance, repair and improvement of the Project. In performance of this duty, the Agent shall:
 1. submit plans and specifications to DHCR for review and approval;
 2. solicit bids in accordance with the rules and regulations of DHCR and the DHCR approved affirmative action plan;
 3. make all reasonable efforts to solicit bids from minority and women – owned business enterprises, as defined by DHCR pursuant to Article 9 of Executive Order No. 21 dated August 4, 1983, for services and/or purchases to be contracted on behalf of the Project and to make certain that such bids receive full and fair consideration;
 4. rebid or renew contracts for continuing services so as to prevent any lapse in service;
 5. submit proposed contracts to DHCR for review and approval in accordance with DHCR procedures;
 6. maintain a contractor log; and
 7. properly supervise all contracts.

e. **Insurance** – The Agent shall cause to be placed and kept in force all forms of insurance needed to adequately protect the Owner (or as required by law) including but not limited to Worker’s Compensation, Public Liability, Fire and Extended Coverage and Burglary and Theft. All of the various types of Insurance coverage required for the benefit of the Owner shall be placed with such companies, in such amounts, and with such beneficial interests appearing therein as shall be acceptable to the Owner and DHCR and otherwise be in conformity with the requirements of the mortgage. Copies of all policies must be submitted to DHCR. The Agent shall promptly investigate and make a full, written report as to all accidents or claims for damage relating to the ownership, operation and maintenance of the project, including any damage or destruction to the Project and the estimated cost of repair, and in connection therewith, shall cooperate with, and make any and all reports required by any Insurance Company which has issued a policy to or on behalf of the Owner. A copy of said report shall be submitted to the Owner, the Insurance Company and DHCR. It shall be further understood that there will be an endorsement in the liability policy of the Owner covering the Agent at satisfactory limits.

f. **General Files** – The Agent shall maintain a comprehensive set of general files. Such files shall include but not be limited to:

1. undated tenant data;
2. systematic filing of work orders;
3. tickler files for lease renewals, recertifications, contract expiration dates, report due dates and follow-up dates;
4. equipment inventory records;
5. warranty expiration dates;
6. service contracts;
7. general correspondence;
8. updated rules and regulations of DHCR; and
9. appropriate government agency directives memoranda.

g. **Apartment Inspections** – The Agent shall establish and maintain a schedule for the physical inspection of all apartments. Written records of all inspections shall be filed in the appropriate files. Such records shall include:

1. the results of the inspection;
2. the signatures of the inspector and tenant and;
3. records of follow-up where necessary.

7.4 Fiscal Administration

a. Agent shall collect all rent or carrying charges and all surcharges and other fees and charges in accordance with DHCR procedures. All monies collected shall be deposited daily into the DHCR approved Project Administration Account with the source of such monies clearly identified. Agent shall establish a delinquent list no later than the 10th day of each month with updating before the end of the month.

b. If a tenant/tenant-shareholder vacates his apartment owing money on account or unpaid rent or carrying charges then the Agent shall notify the tenant/tenant-shareholder by mail within five (5) business days of move-out of the amount owned. If the tenant/tenant-shareholder has not paid the arrears within fifteen (15), days of move-out, then the Agent shall submit the account to a DHCR approved collection agency. All write-offs of uncollectible accounts shall be in accordance with DHCR rules, regulations directives or orders.

c. Agent shall collect the proper amount of security deposits and place such monies in a separate interest-bearing bank account. Agent shall further remit to tenants annually the proper amount of interest, refund to vacating tenants the amount due with a full explanation of any deductions and adjust the amount of security required if warranted.

d. If applicable, Agent shall comply with all governmental requirements regarding subsidy programs so as to assure that the Project utilizes and receives the maximum subsidy allowable. Agent shall request increased subsidies when required.

e. If applicable, the Agent shall collect the proper amount of equity payments from tenant-shareholders and refund, in a timely manner, the proper amount to vacating tenant-shareholders, with all deductions itemized.

f. Agent shall make timely and proper payments on account of debt service, all real estate taxes, local assessments and water and sewer charges.

g. Agent shall submit to DHCR for approval by the date and in the form prescribed by DHCR as Budget/Rent Determination Application. Agent shall adhere to the approved Budget as closely as possible. All proposed expenditures in excess of the budgeted amounts require submission by the Agent to DHCR of budget revision requests and are subject to the approval of DHCR. All Project financial records shall be made available at the site to the tenants.

h. Agent shall make timely deposits into the Project's Operating Escrow Fund account the amounts so directed by DHCR. Requests for payments out of such account shall be accompanied by adequate documentation to enable DHCR to determine that such payments are properly chargeable to the account.

i. All bank accounts required by DHCR shall be properly maintained.

7.5 Marketing, Tenant Selection and Leasing

a. **Marketing** – The Project shall be operated in accordance with an affirmative fair housing marketing plan approved by DHCR. Such plan shall be posted in the management and/or rental office.

b. Applications –

All applications for apartments shall be:

1. on a form approved by DHCR,
2. numbered by machine,
3. time and date stamped,
4. accompanied by the required processing fee which shall be deposited into the Projected Administration accounts, and
5. accompanied by material explaining eligibility and tenant selection criteria.

Applicant shall be given a copy of the numbered application at time of application.

Agent shall maintain an application book that records:

1. application number,
2. applicant's name and address,
3. family composition,
4. apartment size requested,
5. any applicable priorities,
6. date of receipt of application,
7. credit check status,
8. eligibility, and
9. apartment assignment or cancellation.

All applicants shall be canvassed annually to determine whether or not the applicant desires to be maintained in a current status.

Closing the application list and re-opening shall be done in accordance with the rules, regulations, orders and directives of DHCR.

c. Tenant Selection – All tenant selection shall be in accordance with the rules, regulations, orders and directives of DHCR, including but not limited to:

1. Agent shall submit to DHCR the application for rental, with support documentation, prior to committing apartment to applicant.
2. Lease and move-in to occur only after receipt of applicant approval by DHCR.
3. Agent shall document its efforts to rent specifically modified apartments to appropriate applicants.
4. Intra-project transfers shall be given priority and shall be mandated where required by the rules, regulations, orders or directives of DHCR.

d. Leasing (Residential)

1. Agent shall use lease forms and riders approved by DHCR.
2. Term of the lease shall be in accordance with rules and regulations, orders or directives of DHCR.
3. Rent charged shall be in accordance with the current rent order and/or rent schedule approved by DHCR and, when required, HUD.
4. All notices required by the lease shall be sent to the tenants on a timely basis.

e. Leasing (Commercial)

1. Agent shall actively attempt to rent all commercial space.
2. All leases for commercial space shall be submitted to DHCR for approval and shall contain the mandatory clauses as indicated in DHCR Booklet HM-89, as amended from time to time.

7.6 Apartment Preparation

- a. Agent shall inspect all vacated apartments within one working day of move-out. An inspection form shall be signed by the Agent indicating time and date of the inspection and the results.
- b. Agent shall prepare vacated apartments for new tenants within two weeks of move-out.
- c. Prior to move-in, Agent and prospective new tenant shall inspect the apartment with both parties completing and signing an inspection form.
- d. Any deficiencies resulting from such inspection shall be remedied.

7.7 Physical Maintenance – (Routine and Seasonal)

- a. Agent shall be fully familiar with and maintain the physical condition of the Project.
- b. Agent shall prepare and adhere to schedule for maintenance, janitorial and grounds staffs.
- c. Agent shall maintain an adequate inventory of supplies and equipment.
- d. Where applicable, Agent, subject to the approval of DHCR, shall contract for:
 1. general maintenance;
 2. heating, ventilation and air-conditioning (HVAC) systems;
 3. janitorial services;
 4. painting and decorating;
 5. rubbish removal;
 6. exterminating;
 7. window cleaning;
 8. grounds maintenance;
 9. snow removal; and
 10. security services.

7.8 Physical Maintenance (Corrective)

- a. Agent and Owner shall identify and correct any and all physical deficiencies in the Project and comply with all local codes and laws affecting the Project.
- b. Emergency repairs shall be completed without delay.
- c. Routine repairs shall be completed within five (5) working days of discovery.
- d. Agent shall maintain written records of all remedial work.

7.9 HVAC Systems

- a. Agent shall conduct or cause to be conducted an annual energy audit.
- b. Agent shall prepare and adhere to a preventive maintenance schedule.
- c. Agent shall maintain:
 1. boiler room logs,
 2. a heat complaint log, and
 3. a fuel log.

7.10 Elevators

- a. Agent and Owner shall make sure that the Project's elevators are in good working condition.
- b. Agent shall contract for the maintenance and repair of elevators. Such contract shall be subject to the approval of DHCR and shall contain specifications approved by DHCR.
- c. All necessary repairs shall be made timely.

7.11 Security

- a. Agent and Owner shall maintain a safe and secure project.
- b. If a security staff is utilized, it shall be deployed in accordance with an operating plan approved by DHCR.
- c. A security log containing all incident reports shall be maintained by the Agent.

7.12 Tenant Relations

- a. Agent shall be reasonably available to tenants.
- b. Agent shall hold meetings with tenant leaders on a regular basis.
- c. Agent shall post DHCR field reports.
- d. Agent shall make available community rooms for approved activities.
- e. Agent shall render whatever assistance is required to assure that tenant association elections are properly conducted.

Article 8

8.1 Compensation

For the purpose of compensation payable to the Agent, the following terms shall have the following meanings:

- a. **Initial Base Rate** - shall mean a dollar amount per dwelling unit per month based on factors which have been found to affect the cost of providing all activities required under the Contract Documents.
- b. **Percentage Increment** - shall mean percentage of the Initial Base Rate or Base Rate, as the case may be, to be prescribed annually by the Commissioner, which will be the maximum percentage increase available to Agents.
- c. **Base Rate** - shall mean the Initial Base Rate plus earned Percentage Increments, if any.
- d. **Administrative Expenses** – All expenses associated with, and necessary to, the site office operations of the Project, both management and maintenance, as well as those related to tenant oriented activities and purposes, shall be charged directly to the Project. These shall include but are not limited to the following expense items:

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