

OKLAHOMA REAL ESTATE COMMISSION

This is a legally binding Contract; if not understood, seek advice from an attorney.

**RESIDENTIAL - EXCLUSIVE PROPERTY MANAGEMENT
AND RIGHT TO LEASE AGREEMENT**

CONTRACT DOCUMENTS This "Agreement" is defined as this document, along with the following attachment(s):
(check as applicable)

- Owner Information Disclosure Lead Based Paint Disclosure
- Federal Form W-9 Landlord/Tenant "You need to Know"
- Other _____ Other _____

THIS AGREEMENT is entered into between: _____ ("Owner") and _____ ("Broker") this _____ day of _____ and upon approval by both Owner and Broker as evidenced by their signatures hereto, a valid and binding Exclusive Property Management and Leasing Agreement shall exist, the terms and conditions of which are as follows: The Property shall consist of the following described real estate located in _____ County, Oklahoma.

1. Appointment of Broker and Legal Description of Property. Owner engages and appoints Broker as its sole and exclusive provider of brokerage services, set forth herein, to manage and lease the following real property:

Street Address: _____
Legal Description: _____ (the "Property").

2. Term.

- A. Primary Term:** The primary term of this Agreement shall commence on _____ (Commencement Date) and end on _____ (Termination Date). Unless either party provides written notice of termination to the other party at least sixty (60) days before the Termination Date, this Agreement will automatically renew and continue until either party terminates this Agreement by giving at least sixty (60) days advance written notice to the other party.
- B. Owner Termination:** If Owner terminates this Agreement for any reason and the Property is leased to a tenant on the date this Agreement terminates, Owner must pay Broker all amounts then due under this Agreement and a fee equal to the management fees that would accrue over the remainder of the term of the lease, then in effect, excluding any potential breach by a tenant. If more than one property is made part of and subject to this Agreement, this provision applies to, and will be in effect only with regard to, those properties then leased, and this Agreement will terminate as to any property not then leased.
- C. Broker Termination:** If Broker determines that Broker cannot continue to effectively provide leasing and management services to Owner, for any reason, at any time after sixty (60) days after the Commencement Date, Broker may terminate this Agreement by providing at least sixty (60) days advance written notice to Owner.

3. Authorization.

- A.** Owner authorizes Broker to negotiate, prepare, and execute all leases, including all renewals and extensions of leases and to cancel and modify existing leases for the Property on behalf of Owner. Broker shall be the sole and exclusive Broker for the Property.
- B.** Any leases for the Property shall be for periods of not less than _____ months, and not to exceed _____ months at market rates; provided however, Broker shall lease under the following minimum requirements, unless otherwise approved in writing by Owner:

Minimum Rent: _____

Minimum Security Deposit: _____

Pets Allowed: Yes No Minimum Pet Fee: _____

Other Minimum Requirements: _____

- C.** Owner authorizes Broker to pay all expenses as hereinafter provided to the extent funds are available.

4. Compensation. Owner agrees that:

- A. Broker shall be paid a leasing fee of _____% of the first full month's rent or _____, whichever is greater and lease renewal fee of _____.
- B. Broker shall be paid a management fee of _____% of each month's rental income during the term of the lease and renewals of said lease, or _____dollars each month, whichever is greater.
- C. On the commencement of the term of the Property Management Agreement and anytime during the Property Management Agreement, if the Property is vacant, Broker shall be paid a vacancy fee of _____per month until the Property is leased.
- D. If at any time this Agreement is in effect or within _____days after its termination, Owner sells the Property to tenant who is occupying the Property, Owner will pay Broker a fee of _____% of the sales price or _____at the time the sale closes, whichever is greater. If, however, a separate written listing agreement between Owner and Broker applies to the sale, this paragraph will not apply. Fees under this paragraph are earned at the time Owner agrees to sell the Property and are payable at closing.

If at any time this Agreement is in effect Owner sells or agrees to sell the Property to a person other than the tenant occupying the same Property and does not utilize Broker to sell the Property pursuant to a separate written listing agreement, Owner will compensate Broker _____for Broker's time and services to coordinate any showings, inspections, appraisals, repairs, and other matters related to the sale of the Property. Fees under this paragraph are earned at the time the services are rendered and payable upon Owner's receipt of Broker's invoice or statement.

- E. Administrative fees collected by Broker from tenants or prospective tenants, including, but not limited to, application fees, bad check fees, inspection fees, credit card fees, credit report fees, late charges, or any other administrative fees, Broker will retain the fees as compensation for the time, effort, and administration required to collect those fees. The administrative fees under this paragraph are earned and payable to Broker at the time the fees are collected.
- F. For supervision of restoration and improvements, Broker shall be paid _____or _____% of the cost, whichever is greater, of any reconstruction, substantial repairs and capital improvements made to premises during the term of this Agreement in excess of \$ _____. Broker must receive written authorization from Owner for each specific project. Any construction shall be scheduled, coordinated, and supervised by Broker on behalf of Owner. No fee will be charged for routine maintenance and repairs unless total repairs exceed \$ _____, then a fee of _____may be charged on the total cost of repairs.
- G. If Broker negotiates, coordinates, or deals with any insurance carrier regarding any casualty loss to the Property, or if Broker is required to appear in court or in any legal proceeding for or on behalf of Owner for any reason, (such as eviction, tenant disputes, suits for damage, and others), Owner will pay Broker _____for those services, including any time expended in the preparation of any dealings with insurance carriers or appearance in any legal proceedings. Fees under this paragraph are earned at the time the services are rendered and payable upon Owner's receipt of Broker's invoice or statement.
- H. Owner agrees Broker shall be entitled to deduct from the monthly rental income any earned commissions, fees and expenses as herein provided to the extent funds are available from rental income, reserves, and funds of Owner for the operational maintenance and repair of the Property. If sufficient funds are not available from monthly rental income, deposits, reserves or other income from the operation of the Property, then Owner shall pay those fees and expenses within _____days of Owner's receipt of Broker's invoice(s) for the same.

5. Initial deposits and Contingency Reserve. Immediately upon commencement of the Agreement, Owner shall remit to Broker the sum of \$ _____to be deposited in the Operating and/or Reserve Accounts as an initial deposit representing the estimated disbursements to be made in the first month following the commencement of this Agreement, plus an additional sum of \$ _____as a contingency reserve. Owner agrees to maintain the contingency reserve stated above at all times in the Operating and/or Reserve Account(s) to enable Broker to pay the obligations of Owner under this Agreement as they become due. Owner and Broker shall review the amount of the contingency reserve from time to time and shall agree in writing on a new contingency

6. Operating and/or Reserve Account(s). Broker shall establish an account known as _____Trust Account separate and apart from Broker's corporate accounts, for the deposit of receipts collected as described herein, in a bank or other institution within the State of Oklahoma whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The depository institution shall be selected by Broker. However, Broker shall not be held liable in the event of bankruptcy or failure of a depository. Funds in the Operating and/or Reserve Account(s) remain the property of Owner subject to disbursement of expenses by Broker as described in this Agreement.

7. Security Deposits. Broker shall collect and deposit tenant's security deposits in an FDIC insured Trust Account in the State of Oklahoma in accordance with the Landlord Tenant Act and the tenant's lease agreement. It is understood and agreed by all parties that these funds may be deposited into an FDIC insured interest bearing account with Broker retaining the interest to compensate for the cost and burden of maintaining the account. Any other interest paid on the operating account or the Trust Account will also be retained by Broker.

8. Broker Duties, Services, and Relationships. Broker's relationship with Owner and duties under that relationship shall be as provided under the Broker Relationship Act of 59 O.S. § 858-351 et seq. Specifically, 59 O.S. § 858-353 sets forth the following duties and responsibilities:

Broker Relationship Act. Broker duties and responsibilities.

A. A broker shall have the following duties to all parties in a transaction, which are mandatory and may not be abrogated or waived by a broker:

1. Treat all parties with honesty and exercise reasonable skill and care;
2. Unless specifically waived in writing by a party to the transaction:
 - a) receive all written offers and counteroffers;
 - b) reduce offers or counteroffers to a written form upon request of any party to a transaction, and
 - c) present timely such written offers and counteroffers;
3. Timely account for all money and property received by the broker;
4. Keep confidential information received from a party or prospective party confidential. The confidential information shall not be disclosed by a firm without the consent of the party disclosing the information unless consent to the disclosure is granted in writing by the party or prospective party disclosing the information, the disclosure is required by law, or the information is made public or becomes public as the result of actions from a source other than the firm. The following information shall be considered confidential and shall be the only information considered confidential in a transaction:
 - a) that a party or prospective party is willing to pay more or accept less than what is being offered;
 - b) that a party or prospective party is willing to agree to financing terms that are different from those offered;
 - c) the motivation factors of the party or prospective party purchasing, selling, leasing, optioning, or exchanging the property; and
 - d) information specifically designated as confidential by a party unless such information is public.
5. Disclose information pertaining to the property as required by the Residential Property Condition Disclosure Act; and
6. Comply with all requirements of the Oklahoma Real Estate License Code and all applicable statutes and rules.

B. A broker shall have the following duties and responsibilities only to a party for whom the broker is providing brokerage services in a transaction which are mandatory and may not be abrogated or waived by a broker:

1. Inform the party in writing when an offer is made that the party will be expected to pay certain costs, broker service costs and approximate amount of costs; and
2. Keep the party informed regarding the transaction.

C. When working with both parties to a transaction, the duties and responsibilities set forth in this section shall remain in place for both parties.

9. Additional Brokerage Services.

A. Broker agrees to use Broker's commercially reasonable efforts to lease and keep leased and occupied all space in the Property, and to collect and to receive all rents and other income due and payable from tenants.

B. Broker shall accept the leasing and management of the Property for the period and upon the term herein provided, and agrees to furnish the services of its organization for the leasing, renting, operation, and management of the Property.

C. Using reasonable care, Broker will verify references and other information contained in rental applications of prospective tenants.

D. Broker shall maintain accurate books and records so that individual items and aggregate amounts of accounts payable and accounts receivable, available cash, and other assets and liabilities relating to the Property are readily determined at any time.

E. Each month funds collected by Broker will be remitted to Owner, less authorized deductions, along with a monthly statement of receipts, disbursements, and charges. The remittance shall be payable to Owner and mailed to the address listed below or deposited into an account as instructed by Owner. In the event disbursements are in excess of rents collected, Owner agrees to pay the shortage promptly upon demand and understands that Broker may terminate the Agreement if the deficiency is not paid.

F. Broker at Owner's expense may hire, discharge, and supervise contractors to make emergency repairs or alterations to the Property (including any non-real estate items) that Broker deems necessary to protect the Property, or the health and safety of tenants occupying the Property

G. On Owner's behalf, Broker will deduct from any funds Broker holds in trust for Owner:

1. any compensation due to Broker under this Agreement;
2. any funds Broker is authorized to expend under this Agreement; and
3. any reimbursement Broker is entitled to receive under this Agreement.

H. Broker at Owner's expense and with Owner's approval shall hire, discharge, and supervise contractors to make any and all reasonable or necessary repairs, maintenance, redecorations, or alterations to the Property (including any non-real estate items).

I. Broker will make reasonable efforts to collect all the rents and other fees due from tenants when the amounts become due, and deposit same into an FDIC insured Trust Account; however, Broker does not guarantee the payment of any tenants rent or other fees.

- J. Broker shall conduct initial physical inspection of the Property and report findings to Owner. Thereafter, Broker will make periodic inspections when Property is vacant and will conduct a physical inspection of the Property between tenancies. Inspections will also be made upon written request by Owner, however, unless there is a reason to suspect tenant is abusing the Property, these requested inspections shall not be more than once every six (6) months.
- K. For security purposes, Broker will re-key exterior locks of Property prior to, or at the time of new tenant takes possession of the Property. The cost of rekeying will be paid as follows: _____% Owner _____% Tenant
- 10. Marketing of Property.** During the term of this Agreement, Owner authorizes Broker to market the leasing of the Property by signage, print, Internet, or website advertising. Any advertising specifically requested by Owner will be at Owner's expense.
- 11. Showing of Property.** Owner authorizes Broker to show or expose the Property to prospective tenants in a manner to be determined exclusively by Broker. However, it is agreed that Properties currently occupied by a tenant shall be shown or exposed to prospective tenants, or buyers, by appointment only.
- 12. Cooperation with Other Brokers and Licensed Associates.**
- A. Cooperating with other Brokers means that Managing Broker will allow other brokers to show the Property to prospective tenants, and that if another broker procures an acceptable tenant, Managing Broker may pay the other brokers a fee from the compensation Managing Broker receives. Managing Broker will determine the terms and conditions of offers to compensate other brokers.
- B. Providing Managing Broker agrees to compensate Cooperating Brokers, or Associates licensed under Managing Broker, a predetermined fee will be paid after the property has been shown to a tenant acceptable to Managing Broker, a rental or lease agreement has been signed, and required rent and deposits have been paid by tenant. In addition to compensation paid by Managing Broker, Owner agrees to contribute an amount not to exceed \$ _____ as additional compensation to Cooperating Brokers or licensees working under Managing Broker's license, to encourage more showings of Owner's property by real estate licensees. Managing Broker is authorized by Owner to withhold Owner's contribution from first month's rent.
- 13. Maintenance of Property.** Owner authorizes Broker to manage and maintain, at Owner's expense, the Property and Owner's equipment therein. Owner agrees that Broker may use the services of independent contractors who carry and are covered by liability and workmen's compensation insurance (or have a workman's compensation insurance waiver). Owner will not hold Broker liable for any tenant damages, or damages incurred by a third party, or any violation of law by tenant.
- 14. Personal Property.** Owner agrees to save Broker harmless from any liability while managing Owner's Property for the removal of, or damage to Owner's personal property, i.e., ceiling fans, portable microwave, fireplace screen and fireplace tools, yard tools, mowers, tractors, garden hoses, curtains, drapes, rods, window shades, blinds, remotes, etc.
- 15. Enforcement of Leases.** Owner authorizes Broker to make all reasonable efforts to enforce the terms of the lease, in accordance with the Oklahoma Residential Landlord Tenant Act and any applicable Fair Debt Collection Practices Act (FDCPA). Owner agrees to pay the costs, including legal fees, incurred by Broker for its enforcement.
- 16. Owner Responsible for All Expenses of Litigation.** Owner shall pay all expenses incurred by Broker, including, but not limited to, reasonable attorney's fees, Broker's costs, Broker's time, any liability, fines, penalties or the like, in connection with any claim, proceeding, or suit involving an alleged violation by Broker or Owner, or both, of any law pertaining to fair employment, fair credit reporting, environmental protection, rent control, taxes, or fair housing. This includes, but is not limited to, any law prohibiting or making illegal discrimination on the basis of race, sex, creed, color, religion, national origin, mental or physical handicap, or familial status; provided, however, that Owner shall not be responsible to Broker for any expenses in the event Broker is finally adjudged to have personally, and not in representative capacity, violated any applicable law. Nothing contained in this Agreement shall obligate Broker to employ legal counsel to represent Owner in any proceeding or suit.
- 17. Legal Fee for Legal Advice.** Upon Owners authorization Broker may obtain legal assistance regarding issues affecting the Property. Owner shall also pay the expense of any legal advice or proceedings affecting the Property.
- 18. Owner's Indemnification.** Owner's shall indemnify and save harmless Broker from and against all claims, losses and liabilities with respect to the Property and arising out of or related to the leasing and managing as established by this Agreement (including costs and attorney's fees), saving and excepting only those resulting from, and arising out of or occasioned by the gross negligence or willful misconduct of the Broker or its employees.
- 19. Broker Assumes No Liability.** Broker assumes no liability whatsoever for any acts or omissions of Owner, or any previous owners or agents or tenants of the Property. Broker 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 a tenant to Owner pursuant to any lease or otherwise. Broker does not assume any liability for previously unknown violations of environmental or any other regulations, which may become known during the period this Agreement is in effect. Any regulatory violations or hazards discovered by Broker will be brought to the attention of Owner in writing, and Owner shall promptly cure them with no liability for Broker.

20. Mortgage Delinquency.

- A. If Owner becomes delinquent under any lien, mortgage, deed of trust, or other encumbrance affecting the Property, Broker may inform any tenant occupying the Property of the delinquency. Once foreclosure action is filed of record, Owner authorizes Broker to allow tenant to terminate the existing lease by giving a 30 day notice to vacate, which will become effective on the date next rent is due. Furthermore, once a foreclosure action is filed of record, Broker retains the right to terminate the Management Agreement by giving a 30-day notice to Owner. If Owner is nonresponsive to notice from Broker, notice to Owner by Broker to Owner's last known address by certified mail with return receipt requested will be considered as sufficient notice to Owner.
- B. Once foreclosure is filed of record, and Property is currently leased and occupied by a tenant, Owner authorizes Broker to hold all future rent, up to \$4,000, to protect itself against loss or claims of tenants, cost of repairs to Property during tenant occupancy, or any other cost deemed necessary to fulfill terms of Lease Agreement. Any remaining funds will be forwarded to Owner of Record upon termination of Lease Management Agreement.

21. Insurance. On execution of this Agreement, Owner will review existing coverage with his insurance broker to determine adequacy of coverage and to change policy to a rental policy. Owner agrees to carry bodily injury, property damage, and personal injury liability insurance in limits of not less than Three Hundred Thousand Dollars (\$300,000). Owner will not hold Broker liable for any tenant damages or damages incurred by third party or any violations of law by tenant. Owner agrees to name Broker as additional insured and to provide a current copy of the policy to Broker for the file.

22. Fair Housing. As provided in Oklahoma Landlord Tenant Act, Owner and/or Broker shall not deny or terminate tenancy to a blind, deaf, physically handicapped, or person of emotional needs because of the guide, signal, service, or emotional support animal of that person.

23. Independent Contractor Relationship. Broker shall at all times pertinent hereto be an independent contractor. Nothing contained herein should be construed to create a partnership, employer-employee or joint venture arrangement between the parties.

24. Facsimile and Other Electronic Means. The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

25. Severability. Should any clause in this Agreement be found invalid or unenforceable by a court of law, the remainder of this Agreement will not be affected and all provisions will remain valid and enforceable to the fullest extent permitted by law.

26. Attorney's Fees. If Owner or Broker is a prevailing party in any legal proceedings brought because of a dispute under this Agreement or any transaction related to or contemplated by this Agreement, that party will be entitled to recover from the non-prevailing party all costs of proceedings and reasonable attorney's fees.

27. Special Provisions.

28. Property Condition.

- A. **FLOOD NOTIFICATION.** Has Owner ever been notified by any City or County governmental agency, or is Owner aware that the Property has been flooded or may be prone to flooding? *The terms "flooded" or "flooding" shall mean general and temporary conditions of partial or complete inundation of normally dry land areas and structures upon said areas from the overflow of lakes, ponds, streams, rivers, creeks, and any other inland waters.*

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