

EXCLUSIVE LEASING/MANAGEMENT AGREEMENT



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State law prohibits any real estate broker from representing Owner as a client without first entering into a written agreement with Owner under O.C.G.A. § 10-6A-1 et. seq.

THIS EXCLUSIVE LEASING/MANAGEMENT AGREEMENT ("Agreement") is made and entered into this date of _____ by and between _____ (hereinafter referred to as "Owner") and _____ (hereinafter referred to as "Manager").

WHEREAS, Owner owns that certain real estate property located at _____, Georgia _____, which may be further described in an exhibit attached hereto ("Premises").

WHEREAS, Owner desires to retain Manager, a licensed Georgia real estate broker, as Owner's agent to exclusively rent, lease, operate, and manage Premises for and on behalf of Owner in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants herein set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lease. Manager is authorized to procure a tenant or tenants to lease the Premises for a term of no more than _____ months nor less than _____ months at a monthly rental of at least \$ _____ or such other amount as may be acceptable to Owner. Premises shall be available for occupancy by a tenant obtained by Manager as of the date of _____. Any such lease will be in writing on Manager's standard lease form then in use. In the event, this Agreement is still in effect upon the termination of any lease, Manager shall be authorized to procure a new tenant for the Premises on the same terms and conditions as are set forth in this Agreement.

2. Term. Manager shall have the exclusive right to lease and manage the Premises for an initial term of _____ beginning on the date of _____ and ending on (and including) the date of _____. Notwithstanding the above, if the Premises is leased during the term of this Agreement and the initial term of the Lease extends beyond the initial term of this Agreement, the term of this Agreement shall automatically be extended so that it expires at the same time as the initial term of the Lease plus all renewals thereof ("Initial Term"). Upon expiration of the Initial Term this Agreement will automatically renew for an additional period of _____ unless either Manager or Owner provides written notice to the other of their intent not to renew this Agreement at least _____ days prior to the commencement date of the renewal term. If Owner terminates this Agreement or if Manager terminates this Agreement due to Owner's default, Owner shall immediately pay Manager all fees and commissions they would have earned had this Agreement not been terminated but instead had been in effect for the entire term set forth above. Manager may deduct the full amount of such fees and commissions from any monies being held coming to Manager which would be due Owner.

3. Security Deposit. With respect to any security deposit to be paid by tenant pursuant to the Lease of Property, Owner either [Select one. The section not selected shall not be part of this Agreement.] authorizes Manager to hold such security deposit in Manager's trust account and all interest earned on said account is the property of the Manager or agrees that Owner shall hold the security deposit in accordance with all Georgia laws and shall be fully responsible for the same. If Manager is holding the security deposit of tenant on Property, which is being managed by Manager and the management agreement is terminated, Owner shall designate another real estate broker in Georgia to hold the security deposit and shall give notice to tenant and Manager of the same. Upon such notice being given, Manager shall within thirty (30) days thereafter transfer the security deposit to the newly designated Manager. Owner does hereby consent to such a transfer and agree that Manager shall thereafter be relieved of any and all responsibility and liability for the same. If Owner does not designate a new Manager to hold the security deposit within thirty (30) days of the date of termination of the management agreement with Manager, then Owner shall be obligated to pay Manager a monthly fee of \$ _____ for each month thereafter during which Manager acts as the escrow agent with respect to the security deposit.

4. Charges. Manager is hereby authorized to charge and collect from the tenant all rent, additional rent, late charges, fees for returned checks and credit reports and such other fees and charges as Manager may reasonably deem appropriate. Other than rent, which shall belong to Owner, these charges shall be the property of the party identified below:

- | | | |
|--|-------------|---------------|
| A. Additional Rent: | _____ Owner | _____ Manager |
| B. Late charges: | _____ Owner | _____ Manager |
| C. Fees for Returned Checks: | _____ Owner | _____ Manager |
| D. Credit Reports: | _____ Owner | _____ Manager |
| E. Witness and Production of Document Fees in Litigation: | _____ Owner | _____ Manager |
| F. Non-refundable Administration Fees: | _____ Owner | _____ Manager |

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH _____ IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

G. **Payment Processing Fees:** _____ Owner _____ Manager
H. **Other:** _____ Owner _____ Manager

5. **Services and Fees.** Owner agrees to pay Manager:

- A. A Leasing Fee of _____ upon the new tenant moving into the Premises.
- B. A Renewal Fee of _____ if the tenant remains in the property beyond the initial term of the lease regardless of whether that extension is on a month to month basis or an extended term. This fee will not be charged more than once every months.
- C. A Management Fee of _____% of the rent collected or \$ _____ per month, whichever is greater.
- D. If this box is checked, the Services to be Performed by a Manager Exhibit is attached hereto and incorporated herein and shall control with respect to the management fees to be performed by Manager and the fees for such services.

6. **Receipt and Payment of Funds.**

- A. **Funds of Owner to be Deposited in Trust Account:** Manager is hereby authorized to deposit all rent and other monies received on behalf of Owner in one or more trust accounts of Manager. The account(s) shall be maintained in a federally insured banking institution with offices in Georgia.
- B. **Manager's Right to Debit Trust Account:** Owner hereby expressly authorizes Manager to deduct from Owner's funds in said trust account(s) amounts needed to pay the following expenses (collectively referred to as "Expenses"): (1) management fees, commissions and other amounts owing to Manager; (2) Manager's out-of-pocket expenses associated with managing the Property including, without limitation, copying costs, postage, mileage expenses at the IRS maximum rate, costs to conduct credit checks, costs associated with evicting tenants, etc.; (3) all costs to maintain, repair and improve the Property including emergency repairs to the extent approved in writing by Owner or to the extent the same have been approved elsewhere herein; and (4) all amounts needed to pay bills for which Manager is responsible for paying under the lease of the Property.
- C. **Owner to Maintain Minimum Required Amount in Trust Account:** Owner agrees to maintain in Manager's trust account a minimum required balance of \$ _____ so that Manager has sufficient funds to pay for the above-referenced Expenses. Upon notice from Manager, Owner agrees to immediately send funds to Manager whenever the balance in the trust account(s) is anticipated to have fallen below or has actually fallen below the minimum required balance because of pending or actual Expenses. The amount to be sent to Manager shall at least be sufficient to pay the actual or pending Expense(s) plus restore the minimum required balance in the trust account(s). Manager shall have the right but not the obligation to fund any deficit or shortfall from the minimum required balance in the trust account(s). If Owner fails to fund such deficit shortfall, Manager shall have no liability for failing to do the same. If Manager funds such deficit or shortfall after not receiving payment of the required funds from Owner within fifteen (15) days of Manager's notice to Owner, Manager shall have the right to charge Owner an administrative fee of \$ _____ for each such occurrence where Manager has advanced funds on behalf of Owner without being timely repaid plus interest on the funds advanced in an amount of _____% per annum pro-rated for that portion of a year(s) that the funds remain unpaid. If Manager has Expenses that exceed Owner's funds in the escrow account(s), Manager may in its sole discretion pay all, some or a portion of the Expenses. Owner expressly consents to Manager paying from the funds being held by Manager in trust the commissions, fees, charges and out-of-pocket expenses of Manager it is owed before paying other Expenses hereunder. In the event Expenses of Owner exceed the funds of Owner in Manager's trust account, Manager, after paying all amounts owed to Manager, is authorized, in Manager's sole discretion, to pay the oldest Expenses owed by Owner first.
- D. **Trust Account Reporting:** Manager shall provide Owner a detailed monthly accounting of funds (not later than 30 days after the end of each month) received and disbursed on Owner's behalf and shall remit to Owner the balance of such funds in excess of the minimum required balance, if any, remaining after Manager deducts and pays the Expenses referenced above.
- E. **Prepaid Rent:** Any prepaid rent shall be deposited in Manager's trust account(s). However, such amounts will not be disbursed to Owner (less Expenses) until the same are due and owing to Owner.
- F. **Form 1099:** Manager shall prepare and file on Owner's behalf all 1099 forms of the IRS required by law relative to Expenses paid by Manager.
- G. **Risk of Bank Failure:** Owner hereby agrees to indemnify and hold Manager harmless from any and all claims, causes of action and damages arising out of or relating to any failure by such lending institution(s).

7. **Sale of Property.** In the event Tenant purchases or contracts to purchase the Property either during the lease term or within _____ years after the end of the lease term, Landlord agrees to pay Manager upon the closing of the sale of the Property a real estate commission equal to the following: _____.

For the purposes of this paragraph, the term "Tenant" shall include Tenant, all members of Tenant's immediate family, any legal entity in which Tenant or any member of Tenant's immediate family owns or controls, directly or indirectly, more than ten percent (10%) of the shares or interests therein, and any third party who is acting under the direction or control of any of the above parties.

8. **Marketing.**

- A. **Advertisements:** If Manager is providing marketing and leasing services, Owner agrees not to place any advertisements on Property or to advertise Property for lease in any media except with the prior written consent of Manager and reimburse Manager for any advertising expenses that are specifically directed by Owner to be incurred by Manager. Manager is hereby authorized to place Manager's "For Rent" sign on Property. Manager is authorized to procure tenants to lease Property in cooperation with other real estate brokers and their affiliated licensees and to share Manager's commission with any cooperating Manager who procures a tenant ready, willing and able to lease the Property by paying said cooperating Manager \$ _____. Manager may distribute leasing information (including the rent to be paid) to them and other members of the multiple listing service(s), and said cooperating brokers and their licensees may with permission of Manager (which permission may be granted or denied in the sole discretion of Manager) republish such information in other media. Manager and other real estate brokers and their affiliated licensees may show the Property without first notifying Owner.

B. Lockboxes: Owner does hereby authorize Manager to place a lockbox on the Property to be used in connection with the marketing, inspection and leasing of the Property by Manager, Manager's affiliated licensees, other real estate brokers and their affiliated licensees and others who may need access to the Property. There have been isolated instances of crimes occurring against property and persons where a key from the lockbox was alleged to have been used for a criminal purpose. In order to minimize the risk of such crimes occurring, Owner is encouraged to (a) remove all jewelry, keys, prescription drugs and other valuables or put them in a secure place, (b) not permit lockboxes on door handles that can be unscrewed from the outside or on other parts of the building from which a lockbox can be easily removed, (c) place a separately keyed or internally locking deadbolt lock on the door serviced by lockbox that is locked at all times when the occupant of the Property is present in the Property and (d) take any other measures Owner believes are appropriate to protect Owner's property and all persons occupying the Property.

C. Multiple Listing Service(s): Manager agrees to file the listing with the following multiple listing service(s): _____.

Owner acknowledges that the Service(s) is/are not a party to this Agreement and is/are not responsible for errors or omissions on the part of Owner or of Manager. Owner agrees to indemnify the Service(s) from and against any and all claims, liabilities, damages or losses arising out of or related to the listing and lease of the Property.

9. Manager's Authority. Owner agrees to be responsible for the expenses associated with the leasing and management of the Property and hereby gives Manager the authority to:

- A.** advertise exclusively Property for rent and to display "for rent" signs thereon; to sign, renew and cancel leases for Property; to collect rents that become due and give receipts; to terminate tenancies and to sign and serve in the name of the Owner such notices as are appropriate; to sue in the name of the Owner and recover rents and other sums due; and when expedient, to settle, compromise, and release such actions or lawsuits or reinstate such tenancies.
- B.** make, contract, facilitate and coordinate repairs, alterations, and/or decorations to Property; to purchase supplies and pay bills therefore; Manager agrees to secure the prior approval of the Owner on all expenditures estimated to be in excess of \$ _____ for any one item, except monthly or recurring operating charges and/or emergency repairs in excess of the maximum, if in the opinion of the Manager such repairs are necessary to protect the Property from damage or to maintain services to the tenants as called for in their leases.
- C.** hire, discharge and supervise all contractors as in Manager's sole opinion are necessary for the operation and maintenance of Property. Any contractor working on the Property shall be deemed to be working on behalf of the Owner (and not the Manager) and the Owner shall be financially responsible for all work performed by such contractor.
- D.** make contracts for electricity, gas, fuel, water, telephone, window cleaning, trash or rubbish hauling and other services as Manager shall deem advisable; Owner shall assume the obligations of any contract so entered into prior to the termination of this Agreement.
- E.** contract with others, including affiliates of Manager, in-house staff or companies owned by Manager, to perform services including, but not limited to repairs, maintenance, improvements, accounting, data processing, and recordkeeping. Any such arrangement with affiliates or companies owned by Manager will be on terms generally competitive with terms than could reasonably be realized with unaffiliated persons or companies capable of performing the same services. Owner is hereby aware that Manager may deduct these expenses from the monies coming to Manager that are due to Owner.
- F.** institute and prosecute legal actions and proceedings in Owner's name and on behalf of Owner, terminate leases for cause, remove tenants from Property, recover from damage to Property, and for such purposes, Manager may employ attorneys and incur court costs and litigation costs at Owner's expense for any and all of these things. Manager, at its discretion, is also authorized to settle or compromise any such legal actions or proceedings.
- G.** If the Property is a multi-family apartment complex, obtain candidates to perform ongoing, on-site management services. All decisions whether to hire a particular candidate shall be that of the Owner and any candidates hired by Owner shall be employees of and paid by Owner rather than Manager. Owner acknowledges that the efficient administration of the Property will require at least _____ on-site personnel.

10. Limits on Manager's Authority and Responsibility. Owner acknowledges and agrees that Manager:

- A.** may show other properties to prospective tenants who are interested in Owner's Property;
- B.** shall not be responsible to advise Owner on any matter including but not limited to the following: any matter which could have been revealed through a survey, title search or inspection of Property; the condition of Property, any portion thereof, or any item therein; building products and construction techniques; the necessity or cost of any repairs to Property; mold; hazardous or toxic materials or substances; termites and other wood destroying organisms; the tax or legal consequences of this transaction; the availability and cost of utilities or community amenities; the appraised or future value of Property; any condition(s) existing off Property which may affect Property; the terms, conditions and availability of financing; and the uses and zoning of Property whether permitted or proposed. Owner acknowledges that Manager is not an expert with respect to the above matters and that, if any of these matters or any other matters are of concern, Owner should seek independent expert advice relative thereto. Owner acknowledges that Manager shall not be responsible to monitor or supervise any portion of any construction or repairs to Property and that such tasks clearly fall outside the scope of real estate brokerage services;
- C.** shall owe no duties to Owner nor have any authority to act on behalf of Owner other than what is set forth in this Agreement;
- D.** shall make all disclosures required by law;
- E.** may disclose all information about Property to others; and
- F.** shall, under no circumstances, have any liability greater than the amount of the real estate commission paid hereunder to Manager (excluding any commission amount paid to a cooperating real estate broker, if any) or, if no real estate commission is paid to Manager, than a sum not to exceed one hundred dollars.

11. Disclosures.

- A. Manager agrees to keep confidential all information which Owner asks to be kept confidential by express request or instruction unless the Owner permits such disclosure by subsequent word or conduct or such disclosure is required by law. Owner acknowledges, however, that tenant and tenant's broker may possibly not treat any offer made by Owner (including its existence, terms and conditions) as confidential unless those parties have entered into a confidentiality agreement with Owner.
- B. Manager shall not knowingly give customers false information.
- C. In the event of a conflict between Manager's duty not to give customers false information and the duty to keep the confidences of Owner, the duty not to give customers false information shall prevail.
- D. Unless specified below, Manager has no other known agency relationships with other parties that would conflict with any interests of Owner (except that Manager may represent other buyers, sellers, landlords, and tenants in buying, selling or leasing property).
- E. Manager may provide assistance to prospective tenants and buyers without violating any duties to Owner.
- F. Manager may show alternative properties to tenants and buyers and provide information to same.

12. Manager's Policy on Agency. Unless Manager indicates below that Manager is not offering a specific agency relationship, the types of agency relationships offered by Manager are seller agency, buyer agency, designated agency, dual agency, owner agency, and tenant agency. The agency relationship(s), if any, not offered by Manager include the following:

13. Dual Agency Disclosure. *[Applicable only if Manager's agency policy is to practice dual agency]* If Owner and a prospective tenant are both being represented by the same Manager, Owner is aware that Manager is acting as a dual agent in this transaction and consents to the same. Owner has been advised that:

- A. In serving as a dual agent, Manager is representing two clients whose interests are or at times could be different or even adverse;
- B. Manager will disclose all adverse, material facts relevant to the transaction and actually known to the dual agent to all parties in the transaction except for information made confidential by request or instructions from another client which is not otherwise required to be disclosed by law;
- C. Owner does not have to consent to dual agency and, the consent of Owner to dual agency has been given voluntarily and Owner has read and understands the brokerage engagement agreement.
- D. Notwithstanding any provision to the contrary contained herein, Owner hereby directs Manager, while acting as a dual agent, to keep confidential and not reveal to the other party any information, which could materially and adversely affect Owner's negotiating position.
- E. Manager or Manager's affiliated licensees will timely disclose to each client the nature of any material relationship with other clients other than that incidental to the transaction. A material relationship shall mean any actually known personal, familial, or business relationship between Manager and a client, which would impair the ability of Manager to exercise fair and independent judgment relative to another client. The other party whom broker may represent in the event of dual agency may or may not be identified at the time a tenant enters into this Agreement. If any party is identified after the Agreement and has a material relationship with Manager, then Manager shall timely provide to Owner a disclosure of the nature of such relationship.

14. Designated Agency Disclosure. *[Applicable only if Manager's agency policy is to practice designated agency.]* Owner hereby consents to Manager acting in a designated agency capacity in transactions in which Manager is representing Owner and a prospective tenant. With designated agency, Manager assigns one or more of its affiliated licensees exclusively to represent Owner and one or more of its other affiliated licensees exclusively to represent the prospective tenant.

15. Independent Contractor Relationship. This Agreement shall create an independent contractor relationship between Manager and Owner. Manager shall at no time be considered an employee of Owner. If there are affiliated licensees of Manager assisting Manager in marketing and selling the Property, said licensees may be either employees or independent contractors of Manager.

16. Arbitration. All claims arising out of or relating to this Agreement and the alleged acts or omissions of any or all the parties hereunder shall be resolved by arbitration in accordance with the Federal Arbitration Act 9 U.S.C. § 1 et. seq. and the rules and procedures of the arbitration company selected to administer the arbitration. Upon making or receiving a demand for arbitration, the parties shall work together in good faith to select a mutually acceptable arbitration company with offices in Georgia to administer and conduct the arbitration. If the parties cannot mutually agree on an arbitration company, the company shall be selected as follows. Each party shall simultaneously exchange with the other party a list of three arbitration companies with offices in Georgia acceptable to that party to administer and conduct the arbitration. If there is only one (1) arbitration company that is common to both lists, that company shall administer and conduct the arbitration. If there is more than one arbitration company that is common to both lists, the parties shall either mutually agree on which arbitration company shall be selected or flip a coin to select the arbitration company. If there is not initially a common arbitration company on the lists, the parties shall repeat the process by expanding their lists by two each time until there is a common name on the lists selected by the parties. The decision of the arbitrator shall be final and the arbitrator shall have authority to award attorneys' fees and allocate the costs of arbitration as part of any final award. All claims shall be brought by a party in his or her individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding anything to the contrary contained herein, this agreement to arbitrate shall not apply to: (1) any claim regarding the handling and disbursement of earnest money; and (2) any claim of Broker regarding the entitlement to or the non-payment of a real estate commission hereunder.

17. No Punitive Damages. Notwithstanding anything to the contrary contained herein, neither Owner nor Manager shall be liable to the other for any special, indirect or punitive damages of any kind or nature.

18. Owner's Responsibility.

- A. Owner certifies that unless provided otherwise herein, all systems and furnished appliances are in good working order and repair. Owner certifies that Property is in good and habitable condition and Owner, will at all times, be responsible for the maintenance of Property in: (1) a good habitable condition; and (2) compliance with all applicable laws, ordinances and regulations of all government authorities. Upon the execution of this agreement, Owner will provide to Manager two sets of keys for Property and ensure that Property is clean and the grounds are in good condition.
- B. Owner shall maintain adequate fire and extended coverage insurance on Property, and will, at all times, maintain landlord's liability insurance for Owner and will cause Manager to be named as additional insured under such liability insurance. Owner will provide Manager with evidence of such insurance coverage prior to date of occupancy by tenant and thereafter, within seven (7) days of Manager requesting the same. Owner further certifies to Manager that Owner is unaware of any environmental contamination, or hazardous, toxic, dangerous or unsafe conditions or products on or in Property.
- C. Owner shall keep current in all mortgage obligations, property taxes, association fees, or any other obligations which could lead to a foreclosure action against the Property. Should Manager be notified that a foreclosure action has been initiated against the subject property then Owner authorizes Manager to freeze all of the Owner's funds related to that property and Manager will make no further disbursement to Owner. Owner will have thirty (30) days to correct and make current the obligation that initiated the foreclosure action. Should Owner fail to make current the obligation, and thereby stop the foreclosure action, Owner authorizes Manager to refund the security deposit to the Tenant and to deduct from Owner's funds on hand with Manager all amounts due to broker or Tenant including, but not limited to, any refund to tenant of prorated rent or expenses and all of the management fees that would be due to Manager through the end of the current lease term. Owner and Manager agree that the tenant is not a third party beneficiary and nothing in this paragraph shall limit Manager's other legal remedies to collect from Owner any unpaid fees due to Manager.

19. Owner's Property Disclosure Statement. Owner' Property Disclosure Statement is **OR** is not attached to this Agreement. If Owner's Property Disclosure Statement is attached hereto. Manager is authorized to provide a copy thereof to prospective tenants. Owner shall update Owner's Property Disclosure Statement if Owner is aware of material changes in the Statement so that Manager and any tenant are fully aware of the then current conditions affecting the Property.

20. Repairs.

- A. **Generally.** Manager shall be responsible for arranging for needed repairs to the Property and shall contract with vendors on behalf of Owner to perform such repairs. Manager does not guarantee or warrant the work of such vendors against defects in either labor or materials. Owner acknowledges that the cause of some reported repair and maintenance requests is not always obvious and it is sometimes a matter of trial and error to determine the exact cause of the problem. Manager and/or Manager's employees or agents shall confirm that the maintenance or repair work has generally been performed. Unless otherwise agreed to in writing by Manager, such personnel (including Manager) are not: (1) general contractors; (2) do not have the same level of expertise as the vendor performing the work; and (3) shall rely on the vendor's recommendations in deciding the scope of the repair or maintenance work.
- B. **Emergency Repairs.** Manager is authorized to make emergency repairs to Property as Manager reasonably believes to be necessary to protect Property from damage, prevent the risk of injuries to persons or to maintain services to a tenant such as heating, air conditioning, hot water, potable drinking water that are included as part of services available to the Property. In addition, Manager shall treat as an emergency repair all repairs which Manager has been notified of by a code enforcement officer as needing to be corrected. Owner acknowledges that the cost of making emergency repairs may be significantly higher than the cost of making repairs on a non-emergency basis. Owner understands that Manager is under no duty to make expenditures in excess of the amount of the deposit. The deposit money shall be deposited in Manager's escrow account with Manager retaining the interest if the account is interest-bearing. In the event any check is not honored, for any reason, by the bank upon which it is drawn, Owner shall deliver good funds to Manager within three banking days of receipt of notice. In the event Owner does not timely deliver good funds, Manager, in his sole discretion, shall have the right to terminate this Agreement by giving written notice to Owner. Owner shall promptly reimburse Manager for the cost of all emergency repairs which Manager pays for or for which Manager is obligated.
- C. **Non-Emergency Repairs.** With regard to non-emergency repairs, Manager agrees to obtain the prior approval of Owner before sending out a contractor to make repairs estimated to be in excess of \$_____ for any one repair. Owner acknowledges that estimates of repair costs may not reflect the amount eventually billed for the work. Manager shall send notice to Owner of the need for a non-emergency repair or maintenance. If the Owner does not respond to said notice within two (2) business days of said notice, Owner shall be deemed to have approved the repair or maintenance request and the same may thereafter be performed by Manager.

21. Notice of Propensity of Flooding. In accordance with O.C.G.A. § 44-7-20, Owner hereby certifies to Manager the following: some portion or all of the living space or attachment thereto on Property has **OR** has not been flooded at least three times within the last five (5) years immediately preceding the execution of this Management Agreement. Flooding is defined as the inundation of a portion of the living space caused by an increased water level in an established water source such as a river, stream, or drainage ditch, or as a ponding of water at or near the point where heavy or excessive rain fell.

22. Disclaimer.

- A. Disclaimer on Credit, Criminal and Reference Checks:** Owner acknowledges that any credit and criminal background checks requested by Owner hereunder are being performed by third party credit reporting companies, that the information obtained from such companies may be incomplete and/or inaccurate and that the scope of such checks may vary from company to company with some checks being limited to Georgia while others apply nationwide. Owner shall specify in writing to Manager if Owner wants the credit reporting company to perform a national search. Owner further acknowledges that in checking references the information provided to Manager may also be false, incomplete and/or inaccurate. While Manager may obtain or cause to be obtained certain information regarding the background of prospective Tenants, the decision to rent or not rent to any prospective Tenant shall be made by Owner or Manager. In filling out any Move-In portion of the Move-In/Move-Out Agreement (GAR Form 43) all parties acknowledge that defects in the Property may not always be noticed.
- B. Credit Report Disclosure:** Owner understands and agrees that all credit report information provided to Broker by applicants or credit reporting agencies is strictly confidential and is the sole property of Broker and Broker has no duty to provide said information to Owner unless written permission is granted by the applicant.
- C. Manager Not a Contractor:** Owner acknowledges that Manager is not a licensed general contractor and does not have special expertise to determine if any work performed by third party contractors on the Property has been performed in accordance with building code requirements or building industry standards. If there is a reported need for a repair or replacement of any portion of the Property, Manager shall contact repair personnel and obtain cost of repairing or replacing the same. Under the approval of the repair or replacement by Owner (except in emergencies) Manager shall authorize the work to be performed on behalf of Owner. Upon the completion of the work, Manager shall conduct a visible inspection of the work as a non-expert in the area, to determine if the work appears to have been fully completed. Owner agrees to indemnify and hold Manager harmless from any and all claims, causes of action, suits and damages arising out of or relating to the selection of a vendor to perform the work and the performance of the work itself.
- D. General Disclaimer:** Manager shall not be responsible for uncovering within the Property and disclaims expertise with respect to: (1) violations of building, subdivision, zoning, fire or other codes; or (2) materials or substances that are toxic, hazardous or potentially harmful to the health. Manager disclaims any expertise with respect to protecting the Property and any person residing therein against crime. Manager shall have no responsibility to provide security to the Property and Owner agrees to consult a security professional if such matters are important to Owner. Manager shall have no responsibility for the debts and liabilities of Owner, including debts and liabilities incurred by Manager on behalf of Owner, pursuant to this Agreement.

23. Assignment. This Agreement may be assigned by Manager to another real estate broker licensed in the State of Georgia upon notice to Owner. Any assignee shall fulfill all the terms and conditions of this Agreement.

24. Lead-Based Paint. If any part of a dwelling located on Property was built before 1978 or if Owner does not know when the property was built, Owner agrees to provide the following to Manager prior to entering into this Agreement with a fully executed Lead-Based Paint Exhibit (GAR Form F54) for Manager to provide to tenants prior to them leasing the Property.

- A.** a written disclosure by Owner of the presence of known lead-based paint and/or lead-based paint hazards, if any, in the dwelling.

25. Time of Essence. Time is of the essence of this Agreement.

26. Terminology. As the context may require in this Agreement, the singular shall mean the plural and vice versa and all pronouns shall mean and include the person, entity, firm, or corporation to which they relate.

27. Indemnity. Owner agrees to indemnify and hold Manager harmless from any and all claims, causes of action, suits, damages and injuries arising out of or in connection with the leasing and management of the Property by Manager except in the case of intentional wrongdoing or gross negligence on the part of Manager. In the event of an allegation of gross negligence or intentional wrongdoing on the part of Manager, Owner shall continue to have an affirmative obligation to indemnify Manager until such time as the Manager's gross negligence or intentional wrongdoing has been judicially established in a final order of the court having jurisdiction over said issue. During the entire term of this Agreement, Owner agrees to maintain a general liability insurance policy with a company licensed to do business in Georgia naming the Manager as an additional insured thereunder. Upon request, Owner shall promptly provide Manager with a certificate of insurance evidencing such coverage. Notwithstanding any provision to the contrary contained herein, Manager's liability to Owner shall be limited to the total compensation paid by Owner to Manager in the twelve (12) months prior to Owner asserting a claim for damages against Manager. For the purposes of this section the term "Manager" shall specifically include Manager and Manager's affiliated licensees and employees.

28. Nondiscrimination. Owner and Manager hereby agree to fully comply with all state and federal fair housing laws and regulations and shall not unlawfully discriminate on the basis of race, color, creed, national origin, sex, age, handicap, familial status, sexual orientation or gender identity.

29. No Imputed Knowledge. Owner acknowledges and agrees that with regard to any property in which Owner intends to rent, there shall be no knowledge imputed between Manager and Manager's licensees or between the different licensees of Manager. Manager and each of Manager's licensees shall be deemed to have only actual knowledge of such properties.

30. Governing Law. This Agreement may be signed in multiple counterparts and shall be governed by and interpreted pursuant to the laws of the State of Georgia.

31. **Survival.** The indemnification obligations of Owner herein, the obligation of Owner to pay Manager Fees for services rendered herein and for commissions earned during the term of this Agreement and the obligation of Owner to reimburse Manager for monies advanced or spent on behalf of Owner hereunder shall survive the termination of this Agreement.

32. **Entire Agreement.** This Agreement constitutes the sole and entire agreement between the parties. No representation, promise or inducement not included in this Agreement shall be binding upon any party hereto. This Agreement and the terms and conditions herein may not be amended, modified or waived except by the written agreement of Owner. The failure of the parties to adhere strictly to the terms and conditions of this Agreement shall not constitute a waiver of the right of the parties later to insist on such strict adherence.

33. **Responsibility to Cooperate.** All parties agree to take all actions and do all things reasonably necessary to fulfill in good faith and in a timely manner the terms and conditions of this Agreement.

34. **GAR Forms.** The Georgia Association of REALTORS®, Inc. ("GAR") issues certain standard real estate forms. These GAR forms are frequently provided to the parties in real estate transactions. No party is required to use any GAR form. Since these forms are generic and written with the interests of multiple parties in mind, they may need to be modified to meet the specific needs of the parties using them. If any party has any questions about his or her rights and obligations under any GAR form he or she should consult an attorney. The parties hereto agree that the GAR forms may only be used in accordance with the licensing agreement of GAR. While GAR forms may be modified by the parties, no GAR form may be reproduced with sections removed, altered or modified unless the changes are visible on the form itself or in a stipulation, addendum, exhibit or amendment thereto.

35. **Notices.**

A. Communications Regarding Real Estate Transactions: Client acknowledges that many communications and notices in real estate transactions are of a time sensitive nature and that the failure to be available to receive such notices and communications can have adverse legal, business and financial consequences. During the term of this Agreement, Client agrees to remain reasonably available to receive communications from Manager.

B. Notices between Manager and Client Regarding this Agreement: Client and Manager agree that communications and notices between them regarding the terms of this Agreement (and excluding real estate transactions with which the parties may be involved) shall be in writing, signed by the party giving the notice, and may be delivered in person or to any address, e-mail address and/or facsimile number to the person to whom the communication or notice is being given specifically set forth in this Agreement. It is the intent of the parties that those means of transmitting notices for which a party has not provided an address or number shall not be used for receiving notices and communications. For example, if a party has not provided an e-mail address in this Agreement, it shall mean that the party is not accepting notices or communications sent by this means.

36. **Exhibits and Addenda.** All exhibits/and or addenda attached hereto listed and selected below or referenced herein are made a part of this Lease. If any such exhibit or addenda conflicts with any preceding paragraph, said exhibit shall control:

- Services to be Performed by a Manager Exhibit as Exhibit " _____ "
- Other _____
- Other _____
- Other _____
- Other _____

SPECIAL STIPULATIONS: The following Special Stipulations, if conflicting with any exhibit, addendum, or preceding paragraph, shall control:

Additional Special Stipulations are or are not attached.

BY SIGNING THIS AGREEMENT, OWNER ACKNOWLEDGES THAT: (1) OWNER HAS READ ALL PROVISIONS MADE HEREIN; (2) OWNER UNDERSTANDS ALL SUCH PROVISIONS AND DISCLOSURES AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY; AND (3) OWNER IS NOT SUBJECT TO A CURRENT LEASING/MANAGEMENT AGREEMENT WITH ANY OTHER MANAGER.

OWNER'S ACCEPTANCE AND CONTACT INFORMATION

1 Owner's Signature

2 Owner's Signature

Print or Type Name _____ Date _____

Print or Type Name _____ Date _____

Owner's Address for Receiving Notice _____

Owner's Address for Receiving Notice _____

Owner's Phone Number: Cell Home Work

Owner's Phone Number: Cell Home Work

Owner's E-mail Address _____

Owner's E-mail Address _____

Additional Signature Page is is not attached.

BROKER / BROKER'S AFFILIATED LICENSEE CONTACT INFORMATION

Listing Broker _____

MLS Office Code _____ Brokerage Firm License Number _____

Broker/Affiliated Licensee Signature _____

Broker's Phone Number _____ Fax Number _____

Print or Type Name _____ Date _____

Broker's Address _____

Licensee's Phone Number _____ Fax Number _____

Licensee's E-mail Address _____

GA Real Estate License Number _____

REALTOR® Membership _____

RECEIPT OF A COPY OF THIS AGREEMENT IS HEREBY ACKNOWLEDGED BY OWNER.

The above Agreement is hereby accepted, _____ o'clock _____ m., on the date of _____.

THIS FORM IS COPYRIGHTED AND MAY ONLY BE USED IN REAL ESTATE TRANSACTIONS IN WHICH _____ IS INVOLVED AS A REAL ESTATE LICENSEE. UNAUTHORIZED USE OF THE FORM MAY RESULT IN LEGAL SANCTIONS BEING BROUGHT AGAINST THE USER AND SHOULD BE REPORTED TO THE GEORGIA ASSOCIATION OF REALTORS® AT (770) 451-1831.

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