

Harvey Goodman Realtor Property Management Agreement

THIS AGREEMENT made and entered into this _____ day of _____ (also known as the “anniversary date”) 2015, by and between _____ (hereafter referred to as “OWNER”) and J. & J., L.L.P. d/b/a HARVEY GOODMAN REALTOR, a West Virginia and Ohio limited liability partnership with addresses at 250 West Main Street in Saint Clairsville, Ohio, and 980 National Rd Wheeling, West Virginia, and/or assigns, hereinafter referred to as “MANAGER.”

WITNESSETH: For and in consideration of the mutual covenants contained herein, the parties hereto hereby agree as follows:

EXCLUSIVE RIGHT TO LEASE AND MANAGE : OWNER hereby appoints MANAGER and MANAGER hereby accepts appointment as the sole and exclusive leasing agent and property manager for OWNER’s real property described as _____ (hereinafter referred to as the “Property”) under the terms and conditions as hereinafter set forth. It is hereby understood and agreed that MANAGER is the sole procuring cause of any lease, written or oral, that may be negotiated during this Agreement, even if said lease may have been negotiated either directly or indirectly by OWNER on OWNER’S own behalf.

TERM: This Agreement is entered into by the parties hereto for a term of twelve (12) months. Either party hereto may cancel this Agreement on its anniversary date by giving the other written notice to terminate this Agreement at least 30 days prior to each said anniversary date. OWNER may also terminate this Agreement at any time by giving a 60 day written notice and paying a cancellation fee to MANAGER equal to one month’s rent.

MANAGEMENT COMPENSATION: In consideration of the services to be rendered to OWNER by MANAGER, OWNER shall pay MANAGER any and all of the following forms of compensation as may be applicable from time to time:

A. **FOR MANAGEMENT**: 10% of gross rentals due during occupancy each month. The full monthly fee shall be assessed during any month that a tenant remains in full or partial occupancy.

B. **FOR LEASING**: A fee equal to one month’s rent for each lease written to a new tenant not to exceed 1 fee in any 12 month period. . MANAGER shall lease the premises each time a vacancy occurs, unless otherwise directed by OWNER in writing.

C. **SALE TO TENANT**: If a sale or exchange of the Property is effected to a tenant who occupies the Property during the term of this Agreement, or anyone acting on the tenant’s behalf, MANAGER shall be considered the procuring cause of such sale and MANAGER shall be paid a commission of at least six percent (6%) of the gross sales price or valuation upon the close of the transaction. This provision for sales commission shall survive any termination of this Agreement.

OWNER Initials ()

MANAGER Initials ()

F. SALE OF THE PROPERTY: MANAGER shall be available to list the Property for sale as agent for OWNER; *provided, however*, that OWNER may list the Property for sale 'by owner'.

MANAGEMENT AUTHORITY: OWNER expressly grants to MANAGER herein the following authority:

A. Full management and control of the Property with authority to collect all rent and other monies and securities from any tenant(s) in the Property and issue receipts thereof. OWNER shall be responsible for and shall reimburse, or pay in advance as requested by MANAGER, all third party (vendor or repairman) expenses incurred or to be incurred by MANAGER pursuant to this Agreement. Additionally there will be a project management fee of 5% for any project that requires management, multiple bids, and multiple meetings with owner/contractor and exceeds \$501.

B. To prepare and negotiate new leases and renewals and terminations of existing leases as deemed appropriate by MANAGER.

C. To provide for any and all negotiating and contractual arrangement (in the name of OWNER) by independent contractors for any and all repair services deemed necessary by OWNER and/or MANAGER, and to pay the independent contractors for these services, repairs and improvement from OWNER's funds. On each improvement and repair item that exceeds \$500.00 (except emergency repairs), OWNER's approval shall be obtained first. OWNER shall provide or bear cost of providing all keys to the premise. *

Notwithstanding anything to the contrary in this Agreement, to the extent permissible by law, HGR Homes shall be the preferred vendor of OWNER and shall be used where feasible unless otherwise directed by OWNER.

D. To provide standard advertising for the Property when vacant at the expense of MANAGER, to list the Property for and to compensate cooperating brokers from fees earned by MANAGER.

E. To serve legal notices upon tenants and to prosecute, in the name of OWNER, or in the name of MANAGER, and at the OWNER's expense, legal actions to evict tenants, recover rents, and terminate tenancies, employing for these purposes a reputable attorney. Such attorney shall be deemed to be the attorney of MANAGER, and OWNER hereby agrees and acknowledges that MANAGER may use said attorney as MANAGER's attorney in any dispute between OWNER and MANAGER. OWNER hereby acknowledges and agrees that any communication between OWNER and said attorney shall not be deemed to be an attorney/client communication in any action between the OWNER and MANAGER. OWNER further authorizes MANAGER to compromise and settle claims on the OWNER's behalf as may be necessary in MANAGER's judgment.

F. OWNER agrees and acknowledges that MANAGER, without accounting to OWNER, may collect as additional management fees, late fees, accrued interest, nonnegotiable check fees, application fees, administrative fees paid by tenant to MANAGER and that

these fees are the property of MANAGER to offset MANAGER's expenses in enforcing the respective lease provisions. First, funds collected from each tenant each month shall be applied toward late fees; pet fees, legal fees, court costs, NSF fees, and lease discount (if applicable) and lastly, to rent. If the tenants do not pay these fees, MANAGER may deduct these fees from the each tenant's security deposit and/or last month's rent.

G. Interest received on MANAGER's Trust Account, (if any) shall belong to MANAGER to assist in offsetting the expenses of maintaining said trust account. OWNER hereby agrees that MANAGER may require releases from all parties in the event of a controversy before dispersing trust funds.

MANAGEMENT RESPONSIBILITIES: MANAGER shall accept the following responsibilities:

A. To use diligence in the management of the Property for the term of this Agreement and, upon the terms and conditions herein provided, furnish the services of MANAGER for the renting, leasing, operating, and managing of the Property; *provided, however*, that MANAGER does not guarantee the payment of rentals by any tenant, but will make commercially reasonable efforts to collect the same when and as they become due. OWNER hereby authorizes MANAGER to employ collection agencies to assist in the collection of any outstanding tenant debt due.

B. To render monthly statements of receipt, expenses and charges and to remit to OWNER receipts less disbursement. In the event the disbursement shall be in excess of the rents that are collected by MANAGER, OWNER hereby agrees to pay such excess promptly upon demand of MANAGER. If in MANAGER's sole discretionary judgment, it may be necessary or proper to reserve or withhold OWNER'S funds to meet obligations which are or may become due (including without limitation, MANAGER's compensation) thereafter and for which current income will not or may not be adequate, MANAGER may do so. In the event of a breach of this Agreement on the part of OWNER, MANAGER may accelerate all fees due through the balance of this Agreement. OWNER hereby assigns to MANAGER all rents on the Property as security for the obligations described herein. Said agreement shall become absolute upon default by OWNER. If a mortgage company files a foreclosure action due to non-payment of any mortgage on the Property, then MANAGER shall (1) be paid all fees due under the current lease, accelerated, and may deduct such fees from rents collected; and (2) freeze all OWNER's funds on account for the express purpose of negotiating and settling any claim the rental tenants may have (if any) during their statute of limitations as a result of the Property going into foreclosure.

C. To deposit all receipts collected for OWNER (less any sums properly deducted or otherwise provided herein) in a Trust Account separate from MANAGER's personal account; *provided, however*, that MANAGER will not be held liable in the event of bankruptcy or failure of a depository and shall not be liable for bad checks or money not collected; and *provided, further*, that OWNER understands and agrees that rental

disbursement may or may not be made until tenant funds have cleared MANAGER's bank.

Notwithstanding anything to the contrary included in this Agreement, MANAGER assumes no responsibility for other services than agreed to unless specified in the terms of this Agreement or in writing signed by both parties hereto at a later date.

OWNER REPRESENTATIONS. OWNER hereby represents and warrants to MANAGER that:

A. OWNER is the sole owner of fee simple title to the Property.

B. OWNER is fully authorized to enter into this Agreement as a binding enforceable agreement of the Property.

C. OWNER has full right, power, and authority to engage and appoint MANAGER for the purposes and consideration herein set forth and to enter into this Agreement.

D. The Property is not currently subject to any outstanding default, foreclosure, contract of sale, option to purchase, contract for deed, nor any other contractual obligation which would conflict with, preclude, or prohibit MANAGER from discharging its duties described herein.

E. OWNER has no knowledge of any environmental hazards related to the Property and hereby agrees and acknowledges that if any environmental hazards arise that OWNER shall take full responsibility of any cost in removing such hazards.

AGENCY AUTHORIZATION: OWNER hereby constitutes and appoints any authorized employee of MANAGER full power and authority to do and perform all and every act and things necessary for the specific purpose of eviction and/or collection of unpaid rents in regard to the Property as fully as OWNER might or could do if personally represented with full power of substitution and revocation, hereby ratifying and confirming all that said substitute shall lawfully do or cause to be done by virtue hereof. OWNER hereby grants MANAGER the right to enter the Property at any time MANAGER deems necessary.

HOLD HARMLESS AND INDEMNITY-HOMEOWNERS POLICY: OWNER further agrees to hold MANAGER, its agent, independent contractors, and employees, harmless from all damage suits or claims in connection with the management of the Property, except in the case of gross negligence or illegal acts by MANAGER, and from all liability for injuries to person or property suffered or sustained by any person whomsoever, and to carry, at OWNER's own expense public liability insurance (homeowners insurance) in sufficient and commercially reasonable amounts to protect the interest of parties hereto, which policies shall so be written to protect MANAGER in the same manner and to the same extent as OWNER. OWNER shall at all times during the term of this Agreement maintain liability insurance of not less than \$100,000/\$300,000 per occurrence and MANAGER shall be designated on said policy as

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an additional insured if possible. OWNER shall indemnify MANAGER for any damages suffered as a result of any lapse in or failure by OWNER to maintain insurance coverage.

Notwithstanding anything to the contrary provided herein, the indemnification obligations of the parties hereto shall survive the termination of this Agreement to the extent of any claim or cause of action based on an event occurring prior to the date of termination.

ATTORNEY FEES: OWNER and MANAGER do hereby agree that in the event legal procedures are necessary to endure the provision of this Agreement that the prevailing party shall be entitled to recover or receive an award for their reasonable legal fees. In the event MANAGER successfully defends any action (including, but not limited to the Courts, the Board of Realtors, the Better Business Bureau, mediation or any administrative state agency) arising out of any transaction contemplated by this Agreement brought by any other party, including OWNER, MANAGER shall be reimbursed Manager's attorney's fees and Court costs and for time spent in defending such an action.

WAIVER OF JURY TRIAL The parties hereto hereby waive their right to a jury trial on any issue arising from the subject matter of the Agreement regardless of whether or not the cause of action is a tort or contract action. The parties hereto specifically agree that all issues arising out of their relationship shall be resolved by a judge sitting without a jury.

NO PARTNERSHIP. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between OWNER, its successors or assigns, on the one part, and MANAGER, its successors and assigns, on the other part.

BINDING AGREEMENT. This Agreement shall become binding upon the heirs, successors and assigns of the parties hereto.

NO THIRD PARTY BENEFICIARY. Neither this Agreement nor any part hereof nor any service relationship shall inure to the benefit of any third party, to any trustee in bankruptcy, to any assignee for the benefit of creditors, to any receiver by reason of insolvency, to any other fiduciary or officer representing a bankrupt or insolvent estate of either party hereto, or to the creditors or claimants of such an estate. Without limiting the generality of the foregoing sentence, it is specifically understood and agreed that such insolvency or bankruptcy of either party hereto shall, at the option of the other party, void all rights of such insolvent or bankrupt party hereunder (or so many of such rights as the other party shall elect to void).

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NOTICES: For purposes of this Agreement, all notices required herein shall be deemed to have been served upon the other party hereto when mailed to the following addresses or to such other addresses as shall be changed in writing, properly notifying all parties hereto.

OWNER:

MANAGER:

J. & J., L.L.P.
c/o Harvey Goodman Realtor
250 West Main Street
Saint Clairsville, OH 43950

AMENDMENTS. The terms and provisions of this Agreement may be modified or amended at any time and from time to time with the written consent of every party hereto.

FURTHER ASSURANCES. Each party hereto agrees, at his or its own expense, respectively, to execute, acknowledge, and deliver any further instruments reasonably requested by the other party hereto, and to take any other action consistent with the terms of this Agreement that may reasonably be requested by the other party hereto, for the purpose of carrying out the terms of this Agreement.

ENTIRE AGREEMENT. This Agreement constitutes the entire agreement with respect to the matters set forth herein among the parties hereto; it supersedes any prior agreement or understandings among them, oral or written, all of which are hereby canceled.

INDEPENDENT COUNSEL; REVIEW OF AGREEMENT. Each party hereto acknowledges that: (i) all parties hereto have been advised to seek their own separate counsel; (ii) this Agreement is the result of negotiations between the parties hereto; and (iii) each party hereto has executed this Agreement voluntarily after independent investigation, and without fraud, duress, or undue influence. OWNER hereby acknowledges that OWNER has read and signed this Agreement.

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CONSTRUCTION. The language in all parts of this Agreement shall in all cases be construed simply, as a whole, and in accordance with its fair meaning and not strictly for or against either party hereto. The headings and captions of this Agreement are not part of the provisions hereof and shall have no force or effect. In the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party hereto that prepared it.

GOVERNING LAW: This Agreement shall be construed under and in accordance with the laws of the State and is fully performable with respect to the Property in the county in which the Property is located.

SEVERABILITY. If any one or more of the provisions of this Agreement, or the applicability of any such provision to a specific situation, shall be held invalid or unenforceable, such provision should be modified to the minimum extent necessary to make it or its application valid and enforceable, and the validity and enforceability of all other provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

OWNER

[OWNER NAME]

By: _____

Name:

Title:

MANAGER

Harvey Goodman Realtor

By: _____

Name:

Title:

OWNER Initials ()

MANAGER Initials ()